

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

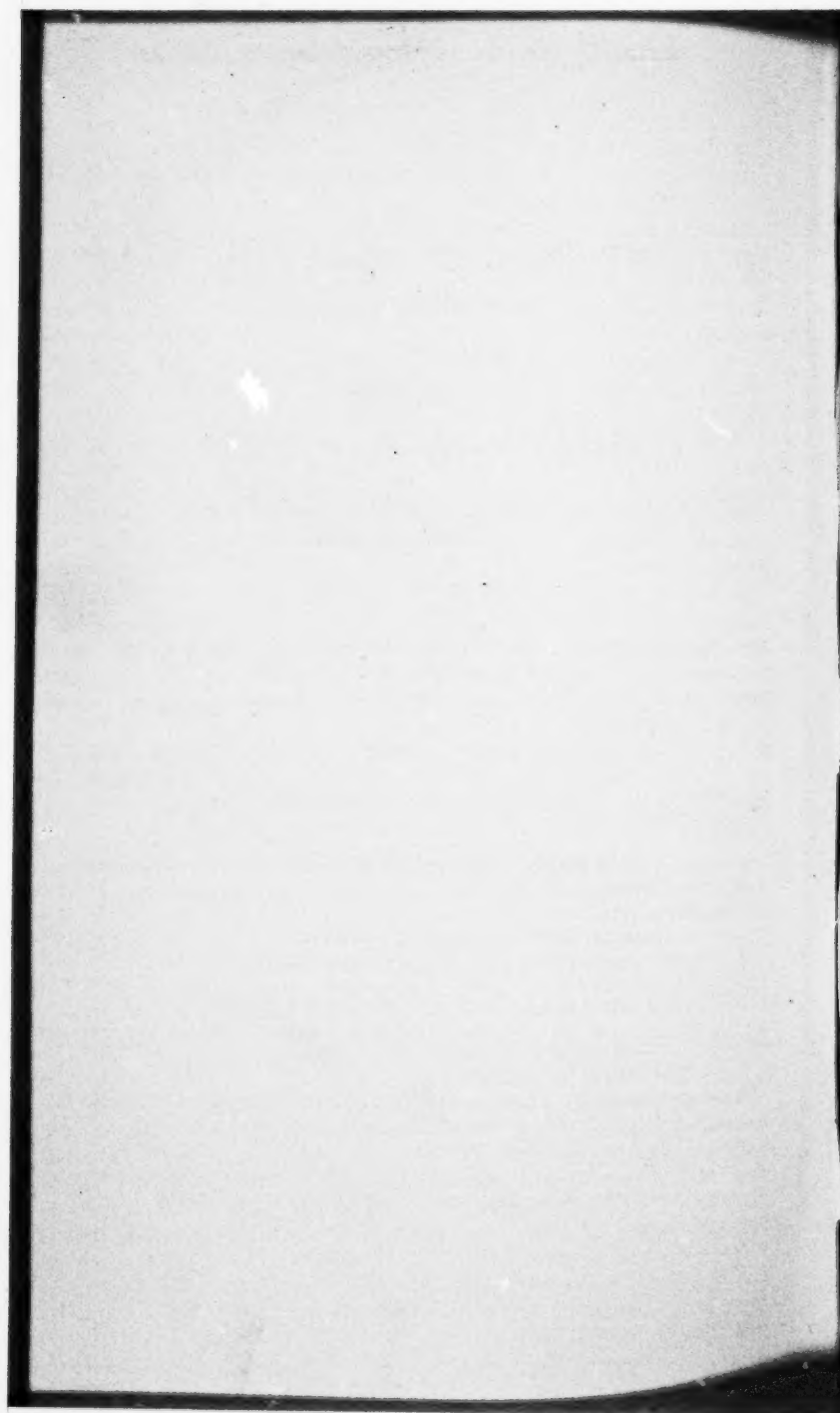
No. 683.

THE UNITED STATES, PLAINTIFF IN ERROR,
vs.
MATHEW T. GRADWELL, EMANUEL CARPENTER, JESSE
CARR, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF RHODE ISLAND.

INDEX.

	Original.	Print.
Writ of error.....	1	1
Return to writ of error.....	2	1
Indictment.....	3	2
Stipulation reducing record.....	42	25
Demurrer of Mathew Gradwell	44	26
Hearing.....	57	42
Opinion on demurrer, Brown, J.....	58	42
Order sustaining demurrers.....	71	50
Petition for writ of error.....	73	51
Order allowing writ of error.....	75	51
Assignment of errors.....	76	52
Præcipe for record.....	84	57
Citation and service.....	86	58
Clerk's certificate.....	88	59



1

Writ of error. (Issued August 24, 1916.)

The President of the United States to the honorable the judge of the District Court of the United States for the First Circuit, District of Rhode Island, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between the United States of America and Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun, Lewell Whitman, Samuel Franklin, Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, a manifest error hath happened, to the great damage of the said United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the twenty-second day of September, A. D. 1916, in the said Supreme Court, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

2 Witness the honorable Edward D. White, Chief Justice of the United States, this twenty-fourth day of August, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

WILLIAM P. CROSS,

Clerk, U. S. District Court, District of Rhode Island.

Allowed by—

ARTHUR L. BROWN,

*United States District Judge for the
District of Rhode Island.**Return of District Court on writ of error.*

DISTRICT COURT OF THE UNITED STATES, } ss:
District of Rhode Island,

And now, here, the judge of the District Court of the United States in and for the District of Rhode Island make return of this writ by annexing hereto and sending herewith under the seal of the said district court a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, William P. Cross, clerk of said District Court of the United States in and for the District of Rhode Island, have hereto set my hand and the seal of said court this 12 day of Sept., A. D. 1916.

[SEAL.]

WILLIAM P. CROSS, *Clerk.*

Transcript of record on appeal.

UNITED STATES OF AMERICA, } ss:
 District of Rhode Island, }

At the District Court of the United States begun and holden at Providence within and for the district of Rhode Island, on the 23rd day of May, in the year of our Lord 1916. Present: The honorable Arthur L. Brown, district judge.

THE UNITED STATES
 vs.

MATTHEW T. GRADWELL AND 13 OTHERS.

} Ind. No. 114.

This indictment was found by the grand jury and returned into the clerk's office on the 28th day of June, 1915, and is in the following figures and words:

Indictment.

DISTRICT OF RHODE ISLAND, ss:

The grand jurors of the United States of America, impaneled, sworn, and charged, in the District Court of the United States of America, at the May term of said court in the year 1915, and inquiring for that district upon their oath present, that, during the year 1914 and particularly on the third day of November, 1914, Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun (alias Jim Rathbun), Lewell Whitman (alias Lou Whitman), Samuel Franklin (alias Sam Franklin), Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, hereinafter referred to as defendants, each late of the town of Coventry, in the county of Kent, in said district of Rhode Island, and Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), (said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), by reason of the fact that they have testified before said grand jurors concerning the matters in this indictment charged, not being here indicted), at said town of Coventry, in said district of Rhode Island, did unlawfully,
 4 knowingly, wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together and with divers other persons to the said grand jurors unknown, to defraud the United States by corrupting and debauching the general election held in the town of Coventry, in the county of Kent, and the State of Rhode Island, on, to wit, November 3rd, 1914, at which said election a candidate for Representative in Congress was voted for, chosen, and elected in said second congressional district of Rhode Island, which said town of Coventry on November 3rd, 1914, was and is still a part of the second congressional district of the State of Rhode Island in the manner following—that is to say, said defendants did devise a scheme to bribe, influence, corrupt, and debauch

the voters of the town of Coventry, on, to wit, the third day of November, 1914, at which time and place a general election was held for the election of State officers and for a Representative in Congress, which said scheme was as follows: The said defendants and certain persons who were to act under the direction and control of said defendants were to give to voters and electors in the town of Coventry on said election day, to wit, the third day of November, 1914, who voted as the defendants directed and influenced said electors and voters to vote and for voting in a manner satisfactory to the said defendants and the persons acting under their direction and control, brass checks with certain stamps thereon, which said brass checks were given to said voters and electors by said defendants and persons acting under their direction and control, in payment for the said voters and electors having voted as said defendants, and the persons acting under their direction and control directed and influenced said voters to vote and for voting in a manner satisfactory to the said defendants and the persons acting under their direction and control;

5 and the said defendants were to pay for and redeem said brass checks given to voters as aforesaid at some time after said election day, by giving and paying to said voters who were given checks as aforesaid on election day, to wit, the third day of November, 1914, as aforesaid, for said checks a sum of money, to wit, five dollars, which said sum of money was to be given and paid to said voters and electors in payment for having voted as directed by said defendants and the persons who acted under their direction and control, and for having voted in a manner satisfactory to said defendants and the persons acting under their direction and control, and said defendants and certain persons acting under their direction and control were to pay to voters and electors for voting as the said defendants and persons acting under their direction and control of said defendants directed said voters to vote, and for voting in a manner satisfactory to said defendants, a certain sum of money, to wit, five dollars, which said money was to be paid to said voters for having voted as directed by said defendants and the persons acting under their direction and control, and for having voted in a manner satisfactory to said defendants and the persons acting under their direction and control.

And at said time and place, as a part of said conspiracy, said defendants did unlawfully, knowingly, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and divers other persons to the grand jurors unknown, to defraud the United States by corrupting and debauching the general election held in the town of Coventry, in the county of Kent, and State of Rhode Island, on, to wit, the third day of November, 1914, which said town of Coventry, on November 3rd, 1914, was and still is a part of the second congressional district of the State

6 of Rhode Island, at which said election a candidate for Repre-

sentatives in Congress was voted for, chosen, and elected in said second congressional district, in the manner following: The said defendants and certain persons who were to act under the direction and control of said defendants were to distribute to voters and electors of the town of Coventry, on said election day, to wit, the third day of November, 1914, certain brass checks, commonly called "beer checks," which said checks were to be good for a bottle of beer to be furnished by said defendants, with the intention on behalf of said defendants to corrupt, bribe, and influence said electors and voters in the town of Coventry, and with the purpose and intention of depriving the United States of the right to a fair and clean election, on said third day of November, at which said election a Representative in Congress for the second congressional district of Rhode Island was to be elected.

And at said time and place, and as a part of said conspiracy, and for said purpose, and with intention to defraud the United States, said defendants did unlawfully, knowingly, wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together with said Calvin E. Hopkins (alias E. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow) to corruptly and fraudulently influence and bribe, and after having corruptly and fraudulently influenced and bribed to vote and cause to be voted for a candidate for Representative in Congress at said election at the voting place in said town of Coventry, a large number of persons who had and possessed the qualifications requisite for electors for said

7 Representative in Congress, as provided in article 1, section 2, of the Constitution of the United States of America, and at said time and place, and with intention to defraud the United States, did unlawfully, knowingly, wilfully, wrongfully, fraudulently, corruptly, and feloniously influence and bribe, and after having so fraudulently and corruptly influenced and bribed, did vote and cause to be voted for a candidate for Representative in Congress at said election, held in the town of Coventry, at which election a Representative in Congress was voted for, chosen, and elected in the second congressional district of the State of Rhode Island, of which said town of Coventry, from, and during all of said time, formed a part, a large number of male citizens of the United States of America, who were qualified to vote for said Representative in Congress, at said election, to wit, William Harney, John G. Potter, Jeffrey Beauchaine, William T. Pierce, Amede Charpentier, Robert L. Congdon (alias Big Bob), Samuel Mortimer, Henry J. LeClair, and Herman Yorke (alias Jake Yorke), and with divers other persons to the grand jurors unknown.

And at said time and place, and as a part of said conspiracy, said defendants did unlawfully, knowingly, wilfully, fraudulently, and feloniously conspire, combine, confederate, and agree together with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William Bigelow (alias Cy. Bigelow), and

with divers other persons to the grand jurors unknown, to defraud the United States of America by committing a wilful fraud upon the law of the United States, to wit, upon article 1, section 2, of the

Constitution of the United States, which reads as follows:

8 "The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

And at said time and place, and as a part of said conspiracy, said defendants did unlawfully, knowingly, wilfully, fraudulently, and feloniously conspire, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and with divers other persons to the grand jurors unknown, to defraud the United States of America by committing a wilful fraud upon the laws of the State of Rhode Island made and provided for the control and protection of elections held within said State of Rhode Island, to wit, section 2 of chapter 123 of the General Laws of Rhode Island, 1909, which reads as follows:

"SEC. 2. The town councils of the several towns and the boards of commissioners, as hereinafter provided, may grant or refuse to grant licenses to such citizens resident within this State for the manufacture or sale of pure spirituous and intoxicating liquors within the limits of such town or city as they may deem proper: Provided, That the number of licenses granted, not including druggists' liquor licenses, shall not exceed, in the several cities and towns of the State, one for each five hundred inhabitants as determined by the last census taken under the authority of the United States or the State of Rhode Island. Whenever any license for the sale of spirituous or intoxicating liquors shall be granted, the same shall be granted to expire on the first day of December next succeeding the granting of the same, unless revoked, as is hereinafter provided, and such citizens resident may obtain at any time, in the discretion of the persons authorized to grant licenses, a license to expire on the first day of December next succeeding the granting of the same, and pay therefor a price which shall be in proportion to the length of time which the said license so granted shall continue in force bears to the price of a license for a year; but no license granted under the provisions of this

chapter shall authorize any person to sell any spirituous and

9 intoxicating liquors on Sunday, or on any election day, or on Labor Day, or on Christmas Day, except in licensed taverns when served with food to guests, or to any woman, except as hereinafter provided, or to sell or deliver, or to suffer to be sold or delivered, to any minor, either for his own use, the use of his parents, or of any other person, or to sell to any intoxicated person or to any person of notoriously intemperate habits, or to sell or furnish intoxicating liquors to any person on a pass-book or order on a store, or to receive from any person any good, wares, merchandise, or provisions in exchange for liquors, or to allow any minor or woman to drink any intoxicating liquors upon the premises, except in licensed taverns

or in licensed victualing houses, or to allow any minor or woman to sell or serve intoxicating liquors except in licensed taverns or in licensed victualing houses. The word 'tavern' as used in this chapter shall be construed to mean houses where the principal business is the furnishing of food and sleeping accommodations. The word 'victualing house' as used in this chapter shall be construed to mean houses or places where the principal business is the furnishing of food. Before granting a license to any person under the provisions of this chapter, said council or board shall give notice by advertisement for at least two weeks in some newspaper published in the city or town where the applicant proposes to carry on business, or if there be no newspaper published in said city or town, then in some newspaper published in the county in which such town is located, of the name of the applicant for said license, and the particular location for which the license is requested; and shall give opportunity for remonstrants to be heard before them as to the granting thereof, and no license shall be granted under this chapter to authorize the sale of any such liquors at any building or place where the owners of the greater part of the land within two hundred feet of such building or place shall file with the board having jurisdiction to grant licenses their objection to the granting of such license; nor shall any license be granted for the sale of such liquors in any building or place, except taverns that were licensed on the twenty-second day of May, nineteen hundred eight, within two hundred feet, measured by any public traveled way, of the premises of any public or parochial school. Before any license shall be issued under the provisions of this chapter, the person applying therefor shall give bond to the city or town treasurer in the penal sum of one thousand dollars, with at least two sureties satisfactory to said council or board, which sureties shall be residents of this State, or a surety company authorized to do business in this State, as surety, which bond shall be conditioned that the person licensed will not violate or suffer to be violated on any premises under his control any of the provisions of this chapter or of chapters one hundred eight or three hundred forty-seven, and for the payment of all costs and damages incurred by any violation of either of said chapters, and he shall also pay for such license to the town or city treasurer the sum hereinafter named, three-fourths thereof for the use of such town or city, and one-fourth to be paid over by the town or city treasurer to the general treasurer for the use of the State."

And at said time and place, and as a part of said conspiracy, said defendants did unlawfully, knowingly, wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and divers other persons to the grand jurors unknown, to defraud the United States of America by committing a wilful fraud upon the laws of the State of Rhode Island made and provided for the control and protection of elections held within said

State of Rhode Island, to wit, section 3 of chapter 20 of the General Laws of Rhode Island, 1909, which reads as follows:

"SEC. 3. Every person who shall directly or indirectly give or offer or agree to give to any elector or to any person for the benefit of any elector any sum of money or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote at any election in this State or by way of reward for having voted or withheld his vote, or who shall use any threat or employ any means of intimidation for the purpose of influencing such elector to vote or withhold his vote for or against any candidate or candidates or proposition pending at such election, shall be punished by a fine of not less than five hundred dollars nor more than one thousand
11 dollars, or by imprisonment of not less than six months nor more than two years, or by both such fine and imprisonment in the discretion of the court, and no person after conviction of such offense shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office; and no evidence given by any witness testifying upon the trial of any charge of bribery shall be used against the person giving such evidence."

And at said time and place the said defendants, as part of said conspiracy, did wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and with divers other persons to the grand jurors unknown, to defraud the United States by perverting and obstructing the due administration of said laws, and each of said laws, and did cause, bring about, and assist in the maladministration of said laws, and did fraudulently and corruptly administer, enforce, and cause and procure the fraudulent and corrupt administering and enforcing of said laws and each of said laws on a day on which an election for Representative in Congress was held in said State of Rhode Island, to wit, the third day of November, 1914, and for a long period prior thereto.

And at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, said defendants did unlawfully, knowingly, wilfully, wrongfully, and feloniously conspire, combine, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and divers other persons to the grand jurors unknown, to defraud the United States of America by obtaining from the governor of the State of Rhode Island a certificate of election, sealed with the seal of the State of Rhode Island, and attested by the Secretary of
12 the State of Rhode Island, certifying that a person whose name is to the grand jurors unknown, whom they, said defendants, intended to elect illegally, corruptly, fraudulently, and contrary to the laws of the State of Rhode Island and the Constitution and laws of the United States of America, was regularly and legally elected Representative in Congress from the second congressional

district of the State of Rhode Island, at said election held on, to wit, the third day of November, A. D. 1914, in accordance with the laws of the State of Rhode Island, and in accordance with the Constitution and laws of the United States of America and by having said person present said certificate of election to the House of Representatives of the United States of America and to the clerk of the last preceding House of Representatives of the United States of America before the meeting of the Sixty-fourth Congress in order that said person should have his name placed on the roll of Representatives elect.

And at the said time and place and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said defendants did unlawfully, knowingly wilfully, wrongfully, and feloniously conspire, combine, confederate, and agree together, and with the said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr), and William H. Bigelow (alias Cy. Bigelow), to defraud the United States of America, by foisting upon the said United States of America and upon the House of Representatives thereof, as a duly elected Member of said House of Representatives of the United States of America, a certain person whose name is to the grand jurors unknown, whom they intended to elect illegally and contrary to the constitution and laws of the State of Rhode Island, and contrary to the Constitution and laws of the United States of America, as a Member of the House of Representatives of

the United States of America, and to secure for such person
13 not duly elected or chosen, the privileges, immunities, and emoluments of a member of the House of Representatives of the United States of America, including the annual statutory salary of seventy-five hundred (\$7,500) dollars per year, provided by the said United States of America, as compensation for a duly elected Member of the House of Representatives of the United States of America.

That the constitution of the State of Rhode Island, to wit, article II, section 1 and section 2, fixes the qualifications for electors of the most numerous branch of the State legislature as follows:

"SECTION 1. Every male citizen of the United States, of the age of twenty-one years, who has had his residence and home in this State for one year, and in the town or city in which he may claim a right to vote, six months next preceding the time of voting, and who is really and truly possessed in his own right of real estate in such town or city of the value of one hundred and thirty-four dollars, over and above all incumbrances, or which shall rent for seven dollars per annum over and above any rent reserved or the interest of any incumbrances thereon, being an estate in fee-simple, fee-tail, for the life of any person, or an estate in reversion or remainder, which qualifies no other person to vote, the conveyance of which estate, if by deed, shall have been recorded at least ninety days, shall thereafter have a right to vote in the election of all civil officers and on all questions in all legal town or ward meetings so long as he

continues so qualified. And if any person hereinbefore described shall own any such estate within this State out of the town or city in which he resides, he shall have a right to vote in the election of all general officers and members of the general assembly in the town or city in which he shall have had his residence and home for the term of six months next preceding the election, upon producing a certificate from the clerk of the town or city in which his estate lies, bearing date within ten days of the time of his voting, setting forth that such person has a sufficient estate therein to qualify him as a voter; and that the deed, if any, has been recorded ninety days.

14 "SECTION 2. (Section 2 annulled by Article VII of the amendments, April, 1888, and the following substituted):

"Every male citizen of the United States of the age of twenty-one years, who has had his residence and home in this State for two years, and in the town or city in which he may offer to vote six months next preceding the time of his voting, and whose name shall be registered in the town or city where he resides on or before the last day of June (see Article XI, section eleven of amendments) in the year next preceding the time of his voting, shall have a right to vote in the election of all civil officers and on all questions in all legally organized town or ward meetings: Provided, that no person shall at any time be allowed to vote in the election of the city council of any city, or upon any proposition to impose a tax or for the expenditure of money in any town or city, unless he shall within the year next preceding have paid a tax assessed upon his property therein, valued at least at one hundred and thirty-four dollars," which said provision is now and has been in full force and effect continuously since April, 1888.

That the Legislature of the State of Rhode Island fixes the qualification for electors of the most numerous branch of the State Legislature by chapter six, section 1, of the General Laws, 1909, which reads as follows:

"SECTION 1. The two following classes of persons have by the constitution, the first as registered and the second as unregistered voters, a right to vote in the election of all civil officers and on all questions in all legally organized town, ward, or district meetings:

"First. Every male citizen of the United States of the age of twenty-one years who has had his residence and home in this State for two years, and in the town or city in which he may offer to vote six months next preceding the time of his voting, and whose name shall be registered in the town or city where he resides on or before the last day of June next preceding the time of his voting: Provided that no person shall at any time be allowed to vote in the election of the city council of any city, or upon any proposition to impose a tax or for the expenditure of money in any town or city, unless he shall within the year next preceding have paid a tax assessed
15 upon his property therein valued at least one hundred and thirty-four dollars.

"Second. Every male citizen of the United States of the age of twenty-one years who has had his residence and home in this State for one year, and in the town or city in which he may claim a right to vote six months next preceding the time of voting, and who is really and truly possessed in his own right of real estate in such town or city of the value of one hundred and thirty-four dollars over and above all incumbrances, or which shall rent for seven dollars per annum over and above any rent reserved or the interest of any incumbrances thereon, being an estate in fee simple, fee tail, for the life of any person, or an estate in reversion or remainder, which qualifies no other person to vote, the conveyance of which estate, if by deed, shall have been recorded at least ninety days," which said provision is now and has been in full force and effect continuously since January 23, 1901.

That section 3 of chapter 20 of the General Laws of Rhode Island, 1909, hereinbefore set out and referred to which is now and has been in full force and effect continuously since April 5, 1907, provides and makes it unlawful for any person to directly or indirectly give or offer or agree to give to any elector, or to any person for the benefit of any elector, any sum of money, or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote.

16 That during all said time said Lewell Whitman was deputy sheriff of the town of Coventry, county of Kent, in the State of Rhode Island, and said Mathew T. Gradwell was liquor officer, charged with the enforcement of the liquor law in said town of Coventry, in said county of Kent.

And it was the intention of the said defendants then and there to defraud the United States of America by depriving it of its lawful right to a fair and clean election, on, to wit, November 3rd, 1914, at which time a Representative in Congress of the United States of America was to be, and, in fact, was voted for, chosen, and elected in the second congressional district of the State of Rhode Island, of which said town of Coventry from and during all of said time formed a part, and it was the further intention of the said defendants to obstruct, impair, corrupt, and debauch the election held in the town of Coventry, in the county of Kent, in the State of Rhode Island, on, to wit, the third day of November, A. D. 1914, and so deprive the United States of America of its lawful right to have a Representative in Congress, who was to be voted for at said election, elected fairly and in accordance with law.

17

Overt acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same said several defendants at the several times in that behalf hereinafter mentioned at Coventry, aforesaid, unlaw-

fully did do the several acts following mentioned in connection with their several names, and the said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy Bigelow), conspirators as aforesaid, unlawfully did do the several acts following mentioned in connection with their names, to wit:

(1) That said Irving Hudson, at Washington, in the town of Coventry, on, to wit, a few days prior to election day, November 3rd, A. D. 1914, gave and delivered to Anthony Lambert, of said Washington, the sum of one hundred and fifty dollars (\$150.00), to be used for the payment of voters of the town of Coventry on election day, November 3rd, 1914.

(2) That said Irving Hudson, at Washington, in the town of Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told, instructed, and directed Anthony Lambert to use the sum of one hundred and fifty dollars (\$150.00) to pay voters of the town of Coventry at the election on November 3rd, 1914.

(3) That said Lewell Whitman, Charles Keach, James Rathbun, Jesse Carr, and Calvin E. Hopkins, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, met together and talked over the giving of brass checks to voters and electors of the town of Coventry on election day, November 3rd, 1914.

18 (4) That said Lewell Whitman, at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Calvin E. Hopkins (alias Ed. Hopkins) a certain number of brass checks, to wit, seventy-five; said brass checks to be given to voters in said Coventry on election day, November 3rd, 1914.

(5) That said Lewell Whitman, at Coventry, on, to wit, November 3rd, 1914, told said Calvin E. Hopkins (alias Ed. Hopkins) that he (said Whitman) would redeem certain brass checks given to voters in Coventry on election day, November 3rd, 1914, by paying said voters a certain sum of money for each brass check some time after election.

(6) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Charles Keach a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman, said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(7) That said Calvin E. Hopkins (alias Ed. Hopkins), on, to wit, at Coventry, November 3rd, 1914, gave and delivered to George Kresgie a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election day by said Whitman paying certain sums of money for them.

(8) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Earl

Dodge a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

19 (9) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, cn, to wit, November 3rd, 1914, gave and delivered to Samuel Franklin, jr. (alias Sam Franklin, jr.), a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(10) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to John G. Cook a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(11) That said Albert Henry Mathewson, at Coventry, on said election day, being then and there a supervisor at said election, appointed for and acting in the voting district located at Coventry Centre in said town of Coventry, gave a certain signal, to wit, nodded his head, to indicate to said Calvin E. Hopkins (alias Ed. Hopkins) and certain other defendants that certain voters had "voted right."

(12) That said Lewell Whitman, at Coventry, on election day, November 3rd, 1914, gave and delivered to John G. Potter a certain brass check, said John G. Potter being then and there a qualified voter in the town of Coventry, and said brass check being given and delivered to said Potter after he had voted in said Coventry on election day, November 3rd, 1914.

(13) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, some time after election day, November 3rd, 1914, paid to John G. Potter the sum of five dollars for a certain
20 brass check, which said brass check had been given to said John G. Potter by said Lewell Whitman on election day, November 3rd, 1914, after he (said Potter) had voted.

(14) That said Lewell Whitman, at Coventry, on election day, November 3rd, 1914, said to Everett P. Harrington, "There is five in it, if we win, and three if we lose," said Harrington being then and there a qualified elector and voter in the town of Coventry, and said statement was made by said Whitman before said Harrington voted on said 3rd day of November, 1914.

(15) That one of said defendants, at Coventry, on election day, November 3rd, 1914, gave and delivered to Everett P. Harrington, after said Harrington had voted, on said date, a certain brass check, to wit, a check marked with three rings or links.

(16) That said Lewell Whitman, at Coventry, on said election day, November 3rd, 1914, told Everett P. Harrington that a certain brass check was good for his (Harrington's) money.

(17) That said Lewell Whitman, at Coventry, on said election day, November 3rd, 1914, told Everett P. Harrington that he (said Harrington) would not get his money that day, but he said Whitman would see that he (Harrington) would get it.

(18) That said Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, told William Harney there was five dollars for his vote if he cast his vote for the Republicans; said William Harney being then and there a qualified elector and voter in said town of Coventry.

(19) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on election day, November 3rd, 1914, gave and delivered to William Harney a certain brass check, to wit, a brass check marked with three rings or links.

21 (20) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a few days after election day, 1914, told William Harney that he, said Samuel Franklin, jr. (alias Sam Franklin, jr.), would pay said Harney the money for a certain brass check given to said Harney by said Franklin on election day, November 3rd, 1914.

(21) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date a few weeks after election day, November 3rd, 1914, the particular date being to the grand jurors unknown, received from William Harney a certain brass check, which he (said Franklin, jr.), had given to said Harney on election day, November 3rd, 1914.

(22) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said date being to the grand jurors unknown, paid to William Harney the sum of five dollars (\$5.00) for a certain brass check, which said Franklin, jr., had given to said Harney on election day, November 3rd, 1914.

(23) That Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, told Robert L. Congdon "to make it a straight vote;" said Robert L. Congdon being then and there a qualified elector in the town of Coventry.

(24) That Samuel Franklin, jr (alias Sam Franklin, jr.), at Coventry, on said election day, November 3rd, 1914, gave and delivered to Robert L. Congdon a certain brass check, to wit, a brass check with three rings or links marked thereon; said brass check being given by said Franklin, jr., to said Congdon after said Congdon had voted on election day, November 3rd, 1914.

(25) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said date being to the grand jurors unknown, asked for, and received from Robert L. Congdon, a certain brass check, to wit,

a brass check marked with three rings or links, which he (said Congdon) had received from said Franklin, jr., on election day, November 3rd, 1914.

(26) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, paid to Robert L. Congdon, the sum of five dollars (\$5.00) for said certain brass check, which said Franklin, jr., had given to said Harney on election day, November 3rd, 1914.

(27) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Arthur Battey a certain brass check, said Arthur Battey being then and there a qualified voter and elector in said town of Coventry, on said election day, November 3rd, 1914.

(28) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Earl C. Green a certain brass check, said Earl C. Green being then and there a qualified elector and voter in the town of Coventry.

(29) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Henry J. Le Clair a certain brass check, saying to said Le Clair, "That is good for \$3.00 if we lose and \$5.00 if we win." "Go to Lou Whitman after election day and get your money."

(30) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Fred McClure a certain brass check, saying to said McClure, "That is good for \$3.00 if we lose and \$5.00 if we win." "Go to Lou Whitman after election day and get your money."

(31) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, a certain date to the grand jurors unknown, a few weeks after election day, November 3rd, 1914, told Henry Le Clair to go down to Lewell Whitman and get his (Le Clair's) money for the certain brass check given to said Le Clair by said Hopkins on election day, November 3rd, 1914, saying to said Le Clair, "There is not any hurry."

(32) That Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, said to Samuel Mortimer, "Be sure and vote right," said Samuel Mortimer being then and there a qualified elector in the town of Coventry.

(33) That Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on election day, November 3rd, 1914, gave and delivered to said Samuel Mortimer a certain brass check, to wit, a brass check marked with three rings or links, said brass check being concealed under a cigarette box, which said Franklin, jr., handed to said Mortimer, saying, "Have a cigarette."

(34) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain day after election day, November 3rd, 1914, said date being to the grand jurors unknown, asked for and received from said Samuel Mortimer a certain brass check,

which said Mortimer had received from said Franklin, jr., on election day, November 3rd, 1914, said Mortimer then and there saying to said Franklin, "If I give you this, that is all there is to it," and said Franklin replying, "Yes, I will see you later."

(35) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said certain date being to the grand jurors unknown, paid to said Samuel Mortimer the sum of five dollars for the certain brass check, which he (said Mortimer) had received from said Franklin on election day, November 3rd, 1914.

(36) That said defendants, at Coventry, on election day, November, 1914, gave, and caused to be given, to Herman Yorke 24 (alias Jake York) a certain brass check, to wit, a brass check marked with three rings, said defendants saying and causing to be said to said Yorke, "Did you do it right?" and said Yorke replying, "Yes"; said Herman Yorke (alias Jake Yorke) being then and there a qualified elector and voter in the town of Coventry at said election, November 3rd, 1914.

(37) That said George Warner, at Coventry, on, to wit, a few days before election day, November 3rd, 1914, in a certain conversation with William T. Pierce, then and there a qualified elector and voter in the town of Coventry, said to said Pierce, "There is going to be a couple of dollars in it for you"; and Pierce replied, "No; I won't vote for that"; then Warner said, "I will give you five. I want you to stay with us." "I will talk with Gradwell. Matt will give you five dollars."

(38) That said George Warner, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told William T. Pierce that he (said Warner) could only pay him four dollars.

(39) That said George Warner, at Coventry, on, to wit, a certain date, a few days after election day, November 3rd, 1914, paid to said William T. Pierce the sum of four dollars.

(40) That said Mathew T. Gradwell, at Coventry, on, to wit, a certain date, a few days after election day, November 3rd, 1914, paid to said William T. Pierce the sum of two dollars.

(41) That said Samuel Franklin (alias Sam Franklin), at Coventry, on, to wit, election day, November 3rd, 1914, gave to Samuel Franklin, jr. (alias Sam Franklin, jr.), a certain number of brass checks, to wit, twenty-five.

(42) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on said election day, November 3rd, 1914, gave to Samuel Franklin, jr. (alias Sam Franklin, jr.), certain brass checks, to wit, twenty-five.

(43) That said William H. Bigelow, at Coventry, on election 25 day, November 3rd, 1914, said to Jeffery Bauchaine, "If you will vote for my party I will give you two dollars."

(44) That said William H. Bigelow (alias Cy. Bigelow), at Coventry, on, to wit, a certain date a few weeks after election day, No-

vember 3rd, 1914, paid to said Jeffery Bauchaine the sum of two dollars, promised by said Bigelow on election day, November 3rd, 1914.

(45) That said Emanuel Carpenter, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told Amede Charpentier that he (said Charpentier) would pay Charpentier two dollars if Charpentier would vote for "Carpenter's side."

(46) That said Emanuel Carpenter, at Coventry, on, to wit, a certain date subsequent to said election day, November 3rd, 1914, paid to said Amede Charpentier the sum of two dollars.

(47) That said Ellery Hudson, Mathew T. Gradwell, Lewell Whitman, and other defendants, at Coventry, on, to wit, some date prior to said election day, November 3rd, 1914, arranged together the spending and use of money to bribe and corrupt voters of the town of Coventry at said election held November 3rd, 1914, by the use of brass checks and in other ways.

26 And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun (alias Jim Rathbun), Lewell Whitman (alias Lou Whitman), Samuel Franklin (alias Sam Franklin), Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, at the time and place and in manner and form aforesaid, unlawfully, wilfully, fraudulently, and feloniously did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid; and said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow) (said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow) not, however, being herein indicted), each did do the several acts aforesaid, to effect the object of said conspiracy, and in furtherance of and in execution of and for the purpose of carrying out the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

HARVEY A. BAKER,
United States Attorney.

27

Second count.

Of the May term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the year 1914, and particularly on the third day of November, 1914, Mathew T. Gradwell, Emanuel Car-

penter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun (alias Jim Rathbun), Lewell Whitman (alias Lou Whitman), Samuel Franklin (alias Sam Franklin), Albert Henry Mathewson, George Warner, and Earl Dodge, hereinafter referred to as defendants, each late of the town of Coventry, in the county of Kent, in said district of Rhode Island, and Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy Bigelow), said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), by reason of the fact that they have testified before said grand jurors concerning the matters in this indictment charged, not being here indicted, at said town of Coventry, in said district of Rhode Island, did unlawfully, knowingly, wilfully, fraudulently, and feloniously conspire, combine, confederate, and agree together and with divers other persons to the said grand jurors unknown, to defraud the United States by corrupting and debauching the general election held in the town of Coventry, in the county of Kent, and the State of Rhode Island, on, to wit, the third day of November, 1914, at which said election a candidate for Representative in Congress was voted for, chosen, and elected in said second congressional district

28 of Rhode Island, which said town of Coventry on November 3rd, 1914, was and still is a part of the second congressional district of the State of Rhode Island, in the manner following—that is to say, said defendants did devise a scheme to bribe, influence, corrupt, and debauch the voters of the town of Coventry, on, to wit, the third day of November, 1914, at which time and place a general election was held for the election of State officers and for a Representative in Congress, which said scheme was as follows: The said defendants and certain persons who were to act under the direction and control of said defendants were to give to voters and electors in the town of Coventry on said election day, to wit, the third day of November, 1914, who voted as the defendants directed and influenced said electors and voters to vote and for voting in a manner satisfactory to the said defendants and the persons acting under their direction and control, brass checks with certain stamps thereon, which said brass checks were given to said voters and electors by said defendants and persons acting under their direction and control in payment for the said voters and electors having voted as said defendants and the persons acting under their direction and control directed and influenced said voters to vote and for voting in a manner satisfactory to the said defendants and the persons acting under their direction and control; and the said defendants were to pay on and redeem said brass checks given to voters as aforesaid at some time after said election day by giving and paying to said voters who were given checks as aforesaid on election day, to wit, the third day of November, 1914, as aforesaid, for said checks a sum of money, to wit, five dollars, which said sum of money was to be given and paid to

29 said voters and electors in payment for having voted as directed by said defendants and the persons who acted under their direction and control and for having voted in a manner satisfactory to said defendants and the persons acting under their control, and said defendants and certain persons acting under their control and direction were to pay to voters and electors for voting as the said defendants and persons acting under the direction and control of said defendants directed said voters to vote, and in a manner satisfactory to said defendants a certain sum of money, to wit, five dollars, which said money was to be paid to said voters for having voted as directed by said defendants and the persons acting under their direction and control and for having voted in a manner satisfactory to said defendants and the persons acting under their direction and control.

And at said time and place, and as a part of said conspiracy, said defendants did unlawfully, knowingly, wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), William H. Bigelow (alias Cy. Bigelow), and divers other persons to the grand jurors unknown, to defraud the United States of America by committing a wilful fraud upon the laws of the State of Rhode Island made and provided for the control and protection of elections held within said State of Rhode Island, to wit, section 3 of chapter 20 of the General Laws of Rhode Island, which reads as follows:

30 "SEC. 3. Every person who shall directly or indirectly give or offer or agree to give to any elector, or to any person for the benefit of any elector, any sum of money or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote at any election in this State, or by way of reward for having voted or withheld his vote, or who shall use any threat or employ any means of intimidation for the purpose of influencing such elector to vote or withhold his vote for or against any candidate or candidates or proposition pending at such election, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment of not less than six months nor more than two years, or by both such fine and imprisonment in the discretion of the court, and no person after conviction of such offense shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office; and no evidence given by any witness testifying upon the trial of any charge of bribery shall be used against the person giving such evidence."

And at said time and place the said defendants, as part of said conspiracy, did wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow) to

defraud the United States by perverting and obstructing the due administration of said law, and did cause, bring about, and assist in the maladministration of said law, and did fraudulently, corruptly administer, enforce, and cause and procure the fraudulent and corrupt administration and enforcing of said law on a day on which an election for a Representative in Congress was held in the State of Rhode Island, to wit, the third day of November, 1914.

And it was the intention of the said defendants then and there to defraud the United States of America by depriving it of its lawful right to a fair and clean election in said town of Coventry on, to wit, November 3rd, 1914, at which time a representative in Congress of the United States of America was to be, and in fact was, voted for, chosen, and elected in the second congressional district of the State of Rhode Island, of which said town of Coventry from and during all of said time formed a part, and it was the further intention of the said defendants to obstruct, impair, corrupt, and debauch the election in the town of Coventry, in the county of Kent, in the State of Rhode Island, on, to wit, the third day of November, A. D.

1914, and so deprive the United States of America of its
31 lawful right to have a Representative in Congress who was
to be voted for at said election elected fairly and in accordance with law.

32

Overt acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said several defendants at the several times in that behalf hereinafter mentioned, at Coventry aforesaid, unlawfully did do the several acts following, mentioned in connection with their several names, and the said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), conspirators as aforesaid, unlawfully did do the several acts following mentioned in connection with their names, to wit:

(1) That said Irving Hudson, at Washington, in the town of Coventry, on, to wit, a few days prior to election day, November 3rd, A. D. 1914, gave and delivered to Anthony Lambert, of said Washington, the sum of one hundred and fifty dollars (\$150.00), to be used for the payment of voters of the town of Coventry on election day, November 3rd, 1914.

(2) That said Irving Hudson, at Washington, in the town of Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told, instructed, and directed Anthony Lambert to use the sum of one hundred and fifty dollars (\$150.00) to pay voters of the town of Coventry at the election on November 3rd, 1914.

(3) That said Lewell Whitman, Charles Keach, James Rathbun, Jesse Carr, and Calvin E. Hopkins, at Coventry, on, to wit, a few

days prior to election day, November 3rd, 1914, met together and talked over the giving of brass checks to voters and electors of the town of Coventry on election day, November 3rd, 1914.

33 (4) That said Lewell Whitman, at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Calvin E. Hopkins (alias Ed. Hopkins), a certain number of brass checks, to wit, seventy-five; said brass checks to be given to voters in said Coventry on election day, November 3rd, 1914.

(5) That said Lewell Whitman, at Coventry, on, to wit, November 3rd, 1914, told said Calvin E. Hopkins (alias Ed. Hopkins), that he, said Whitman, would redeem certain brass checks given to voters in Coventry on election day, November 3rd, 1914, by paying said voters a certain sum of money for each brass check some time after election.

(6) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Charles Keach a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(7) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to George Kresgie a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election day by said Whitman paying certain sums of money for them.

(8) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Earl Dodge a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

34 (9) That said Calvin E. Hopkins (alias Ed Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Samuel Franklin, jr., a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(10) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to John G. Cook a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(11) That said Albert Henry Mathewson, at Coventry, on said election day, being then and there a supervisor at said election, appointed for and acting in the voting district located at Coventry Centre in said town of Coventry, gave a certain signal, to wit, nodded his head, to indicate to said Calvin E. Hopkins (alias Ed. Hopkins), and certain other defendants, that certain voters had "voted right."

(12) That said Lewell Whitman, at Coventry, on election day, November 3rd, 1914, gave and delivered to John G. Potter a certain brass check, said John G. Potter being then and there a qualified voter in the town of Coventry, and said brass check being given and delivered to said Potter after he had voted in said Coventry on election day, November 3rd, 1914.

(13) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, some time after election day, November 3rd, 1914, paid to John G. Potter the sum of five dollars for a certain
35 brass check which said brass check had been given to said John G. Potter by said Lewell Whitman on election day, November 3rd, 1914, after he, said potter, had voted.

(14) That said Lewell Whitman, at Coventry, on election day, November 3rd, 1914, said to Everett P. Harrington, "There is five in it if we win, and three if we lose," said Harrington being then and there a qualified elector and voter in the town of Coventry, and said statement was made by said Whitman before said Harrington voted on said 3rd day of November, 1914.

(15) That one of said defendants, at Coventry, on election day, November 3rd, 1914, gave and delivered to Everett P. Harrington, after said Harrington had voted, on said date, a certain brass check, to wit, a check marked with three rings or links.

(16) That said Lewell Whitman, at Coventry, on said election day, November 3rd, 1914, told Everett P. Harrington that a certain brass check was good for his, Harrington's money.

(17) That said Lewell Whitman, at Coventry, on said election day, November 3rd, 1914, told Everett P. Harrington that he, said Harrington, would not get his money that day, but he, said Whitman, would see that he, Harrington, would get it.

(18) That said Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, told William Harney there was five dollars for his vote if he cast his vote for the Republicans, said William Harney being then and there a qualified elector and voter in said town of Coventry.

(19) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on election day, November 3rd, 1914, gave and delivered to William Harney a certain brass check, to wit, a brass check marked
with three rings or links.

36 (20) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a few days after election day, 1914, told William Harney that he (said Samuel Franklin, jr.) (alias Sam Franklin, jr.), would pay said Harney the money for a

certain brass check given to said Harney by said Franklin on election day, November 3rd, 1914.

(21) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date a few weeks after election day, November 3rd, 1914, the particular date being to the grand jurors unknown, received from William Harney a certain brass check, which he (said Franklin, jr.) had given to said Harney on election day, November 3rd, 1914.

(22) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said date being to the grand jurors unknown, paid to William Harney the sum of five dollars (\$5.00) for a certain brass check, which said Franklin, jr., had given to said Harney on election day, November 3rd, 1914.

(23) That Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, told Robert L. Congdon "to make it a straight vote," said Robert L. Congdon being then and there a qualified elector in the town of Coventry.

(24) That Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on said election day, November 3rd, 1914, gave and delivered to Robert L. Congdon a certain brass check, to wit, a brass check with three rings or links marked thereon, said brass check being given by said Franklin, jr., to said Congdon after said Congdon had voted on election day, November 3rd, 1914.

(25) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said date being to the grand jurors unknown, asked for and received from Robert L. Congdon a certain brass check, to wit, a brass check marked with three rings or links, which he (said Congdon) had received from said Franklin, jr., on election day, November 3rd, 1914.

(26) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, paid to Robert L. Congdon the sum of five dollars (\$5.00) for said certain brass check, which said Franklin, jr., had given to said Harney on election day, November 3rd, 1914.

(27) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Arthur Battey a certain brass check; said Arthur Battey being then and there a qualified voter and elector in said town of Coventry, on said election day, November 3rd, 1914.

(28) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Earl C. Green a certain brass check, said Earl C. Green being then and there a qualified elector and voter in the town of Coventry.

(29) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Henry J. Le Clair a certain brass check, saying to said Le Clair,

"That is good for \$3.00 if we lose, and \$5.00 if we win." "Go to Lou Whitman after election day and get your money."

(30) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Fred McClure a certain brass check saying to said McClure, "That is good for \$3.00 if we lose and \$5.00 if we win." "Go to Lou Whitman after election day and get your money."

(31) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, a certain date to the grand jurors unknown, a few weeks after election day, November 3rd, 1914, told Henry Le Clair to go down to Lewell Whitman and get his (Le Clair's) money for the certain brass check given to said Le Clair, by said Hopkins
38 on election day, November 3rd, 1914, saying to said Le Clair, "There is not any hurry."

(32) That Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, said to Samuel Mortimer, "Be sure and vote and right," said Samuel Mortimer being then and there a qualified elector in the town of Coventry.

(33) That Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on election day, November 3rd, 1914, gave and delivered to said Samuel Mortimer a certain brass check, to wit, a brass check marked with three rings or links, said brass check being concealed under a cigarette box which said Franklin, jr., handed to said Mortimer, saying, "Have a cigarette."

(34) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain day after election day, November 3rd, 1914, said date being to the grand jurors unknown, asked for and received from said Samuel Mortimer a certain brass check which said Mortimer had received from said Franklin, jr., on election day, November 3rd, 1914, said Mortimer then and there saying to said Franklin, "If I give you this, that is all there is to it," and said Franklin replying, "Yes; I will see you later."

(35) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said certain date being to the grand jurors unknown, paid to said Samuel Mortimer the sum of five dollars for the certain brass check which he (said Mortimer) had received from said Franklin on election day, November 3rd, 1914.

(36) That said defendants, at Coventry, on election day, November, 1914, gave and caused to be given to Herman Yorke (alias
39 Jake Yorke) a certain brass check, to wit, a brass check marked with three rings, said defendants saying and causing to be said to said Yorke, "Did you do it right?" and said Yorke replying "Yes"; said Herman Yorke (alias Jake Yorke) being then and there a qualified elector and voter in the town of Coventry at said election, November 3rd, 1914.

(37) That said George Warner, at Coventry, on, to wit, a few days before election day, November 3rd, 1914, in a certain conversation with William T. Pierce, then and there a qualified elector and

voter in the town of Coventry, said to said Pierce, "There is going to be a couple of dollars in it for you," and Pierce replied, "No; I won't vote for that"; then Warner said, "I will give you five." "I want you to stay with us." "I will talk with Gradwell; Matt will give you five dollars."

(38) That said George Warner, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told William T. Pierce that he (said Warner) could only pay him four dollars.

(39) That said George Warner, at Coventry, on, to wit, a certain date a few days after election day, November 3rd, 1914, paid to said William T. Pierce the sum of four dollars.

(40) That said Mathew T. Gradwell, at Coventry, on, to wit, a certain date a few days after election day, November 3rd, 1914, paid to said William T. Pierce the sum of two dollars.

(41) That said Samuel Franklin (alias Sam Franklin), at Coventry, on, to wit, election day, November 3rd, 1914, gave to Samuel Franklin, jr. (alias Sam Franklin, jr.), a certain number of brass checks, to wit, twenty-five.

(42) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on said election day, November 3rd, 1914, gave to Samuel Franklin, jr. (alias Sam Franklin, jr.), certain brass checks, to wit, twenty-five.

(43) That said William H. Bigelow, at Coventry, on election day, November 3rd, 1914, said to Jeffery Bauchaine, "If you will vote for my party, I will give you two dollars."

(44) That said William H. Bigelow (alias Cy. Bigelow), at Coventry, on, to wit, a certain date a few weeks after election day, November 3rd, 1914, paid to said Jeffery Bauchaine the sum of two dollars, promised by said Bigelow on election day, November 3rd, 1914.

(45) That said Emanuel Carpenter, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told Amede Charpentier that he (said Charpentier) would pay Charpentier two dollars, if Charpentier would vote for "Carpenter's side."

(46) That said Emanuel Carpenter at Coventry, on, to wit, a certain date subsequent to said election day, November 3rd, 1914, paid to said Amede Charpentier the sum of two dollars.

(47) That said Ellery Hudson, Mathew T. Gradwell, Lewell Whitman, and other defendants, at Coventry, on, to wit, some date prior to said election day, November 3rd, 1914, arranged together the spending and use of money to bribe and corrupt voters of the town of Coventry at said election held November 3rd, 1914, by the use of brass checks and in other ways.

41 And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun (alias Jim Rathbun), Lewell Whitman (alias Lou Whitman), Samuel Franklin (alias Sam Franklin), Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, at the time and place and in manner and form aforesaid,

unlawfully, wilfully, fraudulently, and feloniously did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid; and said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), (said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), not, however, being herein indicted), each did do the several acts aforesaid to effect the object of said conspiracy, and in furtherance of and in execution of, and for the purpose of carrying out the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

HARVEY A. BAKER,
United States Attorney.

A true bill.

A. H. G. TEMPLE, *Foreman.*

42 Thereafter, on, to wit, November 24, 1915, each of the
14 defendants filed demurrers, which are identical; and in
accordance with a stipulation signed by counsel of all the parties
the demurrer of Mathew T. Gradwell is included in this transcript,
and the others are omitted.

In the District Court of the United States for the District of Rhode
Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.
Violation of sec-
tion 37, Crimi-
nal Code.

Stipulation reducing record. (Filed September 11, 1916.)

In the above-entitled cause it is hereby stipulated by and between Harvey A. Baker, United States attorney for the District of Rhode Island, and Walter L. Barney, attorney for Mathew T. Gradwell, James Rathbun, George Warner, and Albert Henry Mathewson; Alexander L. Churchill, attorney for Ellery Hudson, Irving Hudson, and Earl Dodge; Charles A. Walsh, attorney for George Kresgie, Lewell Whitman, John Colvin, and Charles Keach; Wayne H. Whitman, attorney for Jesse Carr and Samuel Franklin; and James E. Dooley, attorney for Emanuel Carpenter, that the demurrers filed by the various defendants in said cause are identical in form and substance.

It is further stipulated that the clerk in making up the transcript of the record may omit therefrom the following papers and records, to wit, demurrers of Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun, Lewell Whitman, Samuel Franklin, Albert Henry Mathewson, George Warner, Charles Keach, Earl Dodge.

It is also stipulated that this stipulation be made a part of the record on appeal.

HARVEY A. BAKER,
United States Attorney.

WALTER H. BARNEY,
*Attorney for Mathew T. Gradwell, James Rathbun,
George Warner and Albert Henry Mathewson.*

ALEXANDER L. CHURCHILL,
*Attorney for Ellery Hudson, Irving
Hudson, and Earl Dodge.*

CHARLES A. WALSH,
*Attorney for George Kresgie, Lewell Whit-
man, John Colvin, and Charles Keach.*

WAYNE H. WHITMAN,
Attorney for Jesse Carr and Samuel Franklin.

JAMES E. DOOLEY,
Attorney for Emanuel Carpenter.

44 District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA	} Indictment No. 114.
v.	
MATTHEW T. GRADWELL et al.	

Demurrer to indictment. (Filed Nov. 24, 1915.)

And now the said Matthew Gradwell, in said indictment called "Mathew T. Gradwell," one of the defendants, comes into court and, having heard said indictment read, says that the said indictment and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law and that he, the said defendant, is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of sufficient indictment in this behalf, the said defendant prays judgment and that by the court he may be dismissed and discharged from said premises in said indictment specified.

To both counts.

And the said defendant herein shows to the court the following causes of demurrer to both of the counts in said indictment, and to each of them severally:

1. That each of said counts respectively fails to set forth any offense under the laws of the United States.

2. That each of said counts respectively fails to set forth any offense under the laws of the United States with such certainty that the defendant is thereby informed of the nature and cause of the accusation against him, as required by the provisions of Article VI of Amendments to the Constitution of the United States.

3. That, so far as appears from either of the counts of said indictment respectively, said defendant did not conspire to defraud the United States of any property or of any right of which the United States was possessed or which it might under the law enforce.

4. That it does not appear that the object of any supposed conspiracy, as set forth in either of the counts of said indictment respectively, was to defraud or deprive the United States of any right, matter, or thing to which it was by law entitled.

5. That, so far as appears by either of the counts of said indictment respectively, said defendant did not conspire to deprive the United States of any property or right, by deception and artifice, misrepresentation, or concealment of a material fact.

6. That the supposed offenses, and each of them, to commit which was the object of conspiracy on the part of the defendant as
45 set forth in each of the counts of said indictment respectively, are, and at the time of the supposed conspiracy and conspiracies in said counts respectively set forth were, offenses against the State of Rhode Island and not offenses against the United States.

7. That the allegations of said indictment, and of each of the counts thereof respectively, are so uncertain, vague, general, and indefinite that the defendant is not thereby sufficiently apprised as to the charge and charges therein and thereby intended to be made against him to enable him intelligently to plead to said indictment and said counts thereof respectively or properly to prepare his defense thereto.

8. That "corrupting and debauching" the general election, referred to in each of the counts of said indictment, in the manner respectively set forth in said counts, which in said counts respectively are charged as the means by which it was proposed to defraud the United States in accordance with the supposed conspiracy and conspiracies in said counts respectively set forth, do not constitute a fraud upon the United States.

9. That the phrase "fair and clean election," as used in said indictment and each of the counts thereof, has no certain or definite meaning established by law or fixed by known or common usage, and the charges of conspiring to defraud and of intending to deprive the United States of its right to a "fair and clean election," as in said counts respectively set forth, are so uncertain and ambiguous that the defendant is not apprised of the nature of said charges or able to intelligently prepare his defense thereto.

10. That the supposed right to a "fair and clean election," of which each of said counts respectively charges the said defendant with conspiring to deprive the United States, is not a right of which the United States was possessed or to which it was by law entitled or which it might under the law enforce.

11. That the allegations of each of said counts respectively fail to show that the said defendant conspired to do or to cause to be done any act or thing which would prevent a Representative in Congress from being elected in accordance with law at the election referred to in said counts respectively.

To first count.

And the said defendant herein shows to the court the following additional causes of demurrer to the first count of said indictment:

12. That said first count is multiple, in that it charges in said count more than one supposed conspiracy to defraud the United States.

13. That said first count is multiple in that in said one count it charges the said defendant with more than one supposed conspiracy to defraud the United States, to wit, with the supposed conspiracy to defraud the United States in the supposed manner set forth in the first paragraph of the said count, viz, by bribing electors at the election referred to in said count; with another supposed conspiracy to defraud the United States in the supposed manner set forth in the second paragraph of said count, viz, by distributing to voters and electors of the town of Coventry on the day of said election beer checks which were to be good for a bottle of beer to be furnished by the defendants with the intention and purpose set forth in said paragraph; with another supposed conspiracy with intent to defraud the United States in the supposed manner set forth in the third paragraph of said count, viz, by influencing and bribing and, having influenced and bribed, by voting and causing to be voted for a candidate for Representative in Congress at said election, a large number of persons who possessed the requisite qualifications
 46 for electors at said election; with another supposed conspiracy to defraud the United States, as set forth in the fourth paragraph of said count, viz, by committing a supposed wilful fraud upon article I, section 2, of the Constitution of the United States; with another supposed conspiracy to defraud the United States, as set forth in the fifth paragraph of said count, viz, by committing a supposed wilful fraud upon section 2 of chapter 123 of the General Laws of Rhode Island, 1909; with another supposed conspiracy to defraud the United States, as set forth in the sixth paragraph of said count, viz, by committing a supposed wilful fraud upon section 3 of chapter 20 of the General Laws of Rhode Island, 1909; with another supposed conspiracy to defraud the United States, as set forth in the seventh paragraph of said count, viz, by perverting and obstructing the due administration of said laws and each of said laws; with another supposed conspiracy to defraud the United States, as set forth in the eighth paragraph of said count, viz, by obtaining from the governor of the State of Rhode Island a certificate of election, as set forth in said paragraph, and by having the

same presented to the House of Representatives of the United States as and for the purposes set forth in said paragraph; and with another supposed conspiracy to defraud the United States, as set forth in the ninth paragraph of said count, viz, by foisting upon the United States and the House of Representatives thereof an unknown person whom the defendants intended to elect illegally and contrary to law and to secure for him the privileges, immunities, and emoluments, including the salary of a duly elected Member of said House of Representatives of the United States; it not appearing in said count that said several supposed conspiracies were parts of a single conspiracy, or that they were entered into at the same time, or by the same persons.

14. That the said first count is double, in that in said one count it charges the defendants with a supposed conspiracy to defraud the United States, set forth in the first paragraph of said count, viz, by means of bribing electors at the election in said count referred to, and also with another supposed conspiracy to defraud the United States, set forth in the second paragraph of said count, viz, by distributing to voters and electors of the town of Coventry on the day of said election beer checks which were to be good for a bottle of beer to be furnished by the defendants with the intention and purpose set forth in said paragraph.

15. That the said first count is double, in that in said one count it charges the defendants with a supposed conspiracy to defraud the United States set forth in the first paragraph of said count, viz, by means of bribing electors at the election in said count referred to, and also with another supposed conspiracy to defraud the United States, set forth in the fifth paragraph of said count, viz, by committing a wilful fraud upon section 2 of chapter 123 of the General Laws of Rhode Island, 1909, the same being, as appears from said count, a section of said laws which provides for the granting of licenses for the manufacture or sale of pure spirituous and intoxicating liquors, and as to the terms of such licenses and the manner of granting the same and the conditions under which the same may be granted.

16. That, in addition to the divers uncertainties and ambiguities which are common to both of the counts of said indictment, and for which this defendant has demurred to each of said counts as aforesaid, said first count is so uncertain and ambiguous as to render it impossible for the defendant to understand the several charges therein made against him or to intelligently plead to the same or to properly prepare his defense thereto, in divers additional particulars, among others the following, viz:

(a) In that it does not appear in said count for what candidate or candidates it was agreed by the defendants that electors were
47 to vote or to have voted at the election mentioned in said count in order that the defendants should give or cause to be given to them brass checks with certain stamps thereon, as set forth in said count.

(b) In that it does not appear in said count that it was agreed by the defendants to give such brass checks for giving or withholding or for having given or withheld a ballot in favor of or against any particular candidate for Representative in Congress or for any candidate whatsoever for that office.

(c) In that it does not appear in said count that it was agreed by the defendants to give such brass checks for voting or not voting or for having voted or not voted for any candidate at said election.

(d) In that it does not appear in said count how or in what manner the United States was to be defrauded by the distribution of "beer checks," or the furnishing of beer, as set forth in said count.

(e) In that it does not appear in said count how or in what manner said election was to be corrupted or debauched by the distribution of "beer checks," or the furnishing of beer as set forth in said count.

(f) In that it does not appear in said count how electors and voters in the town of Coventry were to be corrupted, bribed, and influenced by the furnishing of beer by the defendants, as charged in said count to have been the intent of the defendants.

(g) In that it does not appear in said count that the supposed intention on behalf of the defendants to corrupt, bribe, and influence electors and voters in the town of Coventry by the defendants furnishing beer as charged in said count, was to bribe or influence said electors and voters to vote for or withhold their vote from any candidate for Representative in Congress or any candidate or candidates at the election mentioned in said count.

(h) In that, so far as appears in said count, the supposed intention on behalf of said defendants to corrupt, bribe, and influence electors and voters in the town of Coventry by furnishing beer, as charged in said count, had nothing to do with the participation of said electors and voters, or any of them, in the election mentioned in said count.

(i) In that it does not appear in said count how the United States was to be deprived of its supposed right to a "fair and clean election" on the 3d day of November, 1914, by the defendants furnishing beer as charged in said count.

(j) In that it does not appear in said count how the supposed purpose and intention of the defendants depriving the United States of its supposed right to "a fair and clean election" was to be effected by the defendant furnishing beer to electors and voters in the town of Coventry as charged in said indictment.

(k) In that it does not appear in said count for what candidate for Representative in Congress at the election mentioned in said count, qualified voters, who were to have voted or to be voted for a candidate for Representative in Congress, as set forth in said count, were to be influenced or bribed to vote at said election, or that such voters, or any of them were to be influenced or bribed to vote for or against any particular candidate or candidates at said election or any candidate or candidates whatsoever thereat.

(l) In that it does not appear in said count what candidate for Representative in Congress at said election the male citizens, qualified

to vote for such Representative at said election, voted or were voted for or against at said election, or that said citizens were influenced or bribed to vote for or against any particular candidate or candidates at said election or any candidate or candidates whatsoever thereat.

48 (m) In that it does not appear in said count what candidate for Representative in Congress at said election said defendant conspired to influence or bribe electors to give in or withhold their ballots in favor of or against at said election.

(n) In that it does not appear in said count that said defendant conspired to influence or bribe electors at said election to give in or withhold their ballots in favor of or against any candidate for Representative in Congress thereat.

(o) In that it does not appear in said count what candidate for Representative in Congress at said election said defendants, or any thereof, influenced or bribed any elector to give in or withhold his ballot in favor of or against thereat.

(p) In that it does not appear in said count that the defendants, or any of them, influenced or bribed any elector to give in or withhold his ballot in favor of or against any candidate for Representative in Congress at said election.

(q) In that it does not appear in said count how or in what manner the United States was to be defrauded by the commission of a supposed wilful fraud upon Article I, section 2, of the Constitution of the United States, as charged in said count.

(r) In that it does not appear in said count how or in what manner a wilful fraud was agreed to be committed upon said Article I, section 2, of the Constitution of the United States, as charged in said count, or what such supposed wilful fraud was to be.

(s) In that it does not appear in said count how or in what manner the United States was to be defrauded by the commission of a supposed wilful fraud upon section 2 of chapter 123 of the General Laws of Rhode Island, 1909, as charged in said count.

(t) In that it does not appear in said count how or in what manner a wilful fraud was agreed to be committed upon said section 2 of chapter 123 of the General Laws of Rhode Island, 1909, as charged in said count, or what such supposed wilful fraud was to be.

(u) In that it does not appear in said count how or in what manner the United States was to be defrauded by the commission of a supposed wilful fraud upon section 3 of chapter 20 of the General Laws of Rhode Island, 1909, as charged in said count.

(v) In that it does not appear in said count how or in what manner a wilful fraud was agreed to be committed upon said section 3 of chapter 20 of the General Laws of Rhode Island, 1909, as charged in said count, or what such supposed wilful fraud was to be.

(w) In that it does not appear in said count how or in what manner the United States was to be defrauded by perverting or obstructing the due administration of said laws as charged in said count.

(x) In that it does not appear in said count how or in what manner said laws, or any thereof, were to be perverted or obstructed, as charged in said count.

(y) In that it does not appear how, in what manner, or by what means the defendants, or any of them, did cause, bring about, or assist in the maladministration of said laws, or any thereof, or did fraudulently and corruptly administer, enforce, or cause or procure the fraudulent and corrupt administering and enforcing of said laws, or any thereof, on the day of said election, as charged in said indictment.

(z) In that it does not appear in said count what person or persons did cause, bring about, or assist in the maladministration of
49 said laws, or any thereof, or did fraudulently and corruptly administer, enforce, and cause and procure the fraudulent and corrupt administering and enforcing of said laws, or any thereof, on the day of said election or at any time prior thereto, as charged in said count.

(aa) In that it does not appear in said count how, in what manner, or by what means said defendants were to obtain from the governor of the State of Rhode Island a certificate of election, as charged in said count.

(bb) In that it does not appear in said count how, in what manner, or by what means the obtaining or presentation of a certificate of election such as is set forth in said count was to defraud the United States, as charged in said count.

(cc) In that it does not appear in said count how or in what manner the presentation of such certificate of election, as is set forth in said count, to the House of Representatives of the United States or to the clerk of the last preceding House of Representatives of the United States before the meeting of the Sixty-fourth Congress would cause the name of the unknown person, in said count referred to, to be placed on the roll of Representatives-elect, as set forth in said count.

(dd) In that it does not appear in said count how or in what manner or by what means the defendants purposed or intended to elect illegally and contrary to the constitution and laws of the State of Rhode Island and contrary to the Constitution and laws of the United States the unknown person mentioned in said count as a Member of the House of Representatives of the United States, as charged in said count.

(ee) In that it does not appear in said count how or in what manner or by what means said defendants agreed or purposed to foister upon the United States of America and upon the House of Representatives thereof as a duly elected Member of said House an unknown person, as charged in said count.

(ff) In that it does not appear in said count how, in what manner, or by what means said defendants agreed or purposed to procure for said unknown person the privileges, immunities, and emoluments of

a Member of the House of Representatives of the United States, as charged in said count.

(gg) In that the pertinency of the recital of the provisions of Article II, section 1 and section 2, of the constitution of the State of Rhode Island, as set forth in said count, does not appear in or by said count.

(hh) In that the pertinency of the recital of chapter 6, section 1, of the General Laws of Rhode Island, 1909, as set forth in said count, does not appear in or by said count.

(ii) In that the pertinency of the recitals of the force and effect of section 3 of chapter 20 of the General Laws of Rhode Island, 1909, and that said section is now and has been in full force continuously since April 5, 1907, as set forth in said count, does not appear in or by said count.

(jj) In that the pertinency of the recitals in said count that the defendant, Lewell Whitman, and the defendant, Matthew T. Gradwell, respectively, during all the time mentioned in said count, held certain supposed offices therein named, but which are not created by law or known thereto, does not appear in or from said count.

(kk) In that it does not appear in said count how or in what manner or by what means it was the intention of said defendant to deprive the United States of its supposed right to a fair and clean election in said town of Coventry on said November 3rd, A. D. 1914, as charged in said count.

50 (ll) In that it does not appear in said count how or in what manner it was the intention of the said defendant to obstruct, impair, corrupt, and debauch said election, as charged in said indictment.

(mm) In that it does not appear how or in what manner the supposed obstructing, impairing, corrupting, and debauching of said election, as set forth in said count, was to deprive the United States of its supposed lawful right to have a Representative in Congress, who was to be voted for at said election, elected in accordance with law.

(nn) In that it does not appear in said count how or in what manner it was intended by the defendant to prevent the lawful election of a Representative in Congress at said election.

(oo) In that the words "elected fairly," as set forth in said count, are uncertain and ambiguous and do not apprise the defendant with certainty of what is intended thereby.

(pp) In that it does not appear from said count what supposed right, other than to have a Representative in Congress lawfully elected, is asserted or intended to be asserted in said count by the use of the words "lawful right to have a Representative in Congress * * * * elected fairly and in accordance with law."

(qq) In that it does not appear in said count how or in what manner it was intended by the defendants, or any of them, to prevent the election "fairly and in accordance with law" of a Representative in Congress, as charged in said indictment.

17. That in addition to the divers uncertainties and ambiguities which are common to both of the counts of said indictment, and for which this defendant has demurred to each of said counts as aforesaid, and in addition to the divers other uncertainties and ambiguities in the charging portions of said first count, referred to in the next preceding cause of demurrer as above set forth, the said first count is further vague, uncertain, and ambiguous in its allegations of acts supposed to have been done by one or more of the parties to a supposed conspiracy, set forth in said count, to effect the object of such conspiracy, which supposed acts in said count are designated as "overt acts," the same, as set forth in said count, not appearing to have been done to effect the object of such conspiracy, and either not appearing to have any relevancy to such supposed conspiracy or being allegations of supposed facts, which severally, if proved, might tend, with further evidence, to show the commission of an act to effect the object of the supposed conspiracy, but which, of themselves and as stated in said count, do not constitute such an act or acts.

Among the aforesaid uncertainties and ambiguities are the following, viz:

(j) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(1)," "(2)," "(3)," "(4)," "(5)," "(6)," "(7)," "(8)," "(9)," "(10)," "(41)," "(42)," and "(47)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; but, on the contrary, so far as said several supposed "overt acts" as therein alleged are relevant to the supposed offense charged in said count, the same, respectively, pertain to the supposed conspiracy itself, and do not constitute an act or acts to effect the object thereof.

(ij) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(1)," "(2)," "(11)," "(14)," "(38)," "(39)," "(40)," "(43)," "(44)," "(46)," and "(47)," was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count, and on the contrary each one of said supposed "overt acts," as in said count charged, so far as appears therein, is not relevant to the offense charged in said count.

51 (iij) No one of the several supposed "overt acts" set forth in said count and numbered respectively "(3)," "(4)," "(5)," "(6)," "(7)," "(8)," "(9)," "(10)," "(12)," "(13)," "(15)," "(16)," "(19)," "(20)," "(21)," "(22)," "(24)," "(25)," "(26)," "(27)," "(28)," "(29)," "(30)," "(31)," "(33)," "(34)," "(35)," "(36)," "(41)," and "(42)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and in no one thereof, as set forth in said count, does it appear that the brass checks, therein respectively charged to have been given or delivered or directed to be given, were, or that any such brass check was proposed or directed to be given or had been given or offered to be given to bribe, influence, corrupt, or debauch any voter or elector or to induce or hire him to vote as directed or suggested by any per-

son or persons, or to the satisfaction of any person or persons, or to give in or withhold his vote for any candidate for Representative in Congress or for any candidate or candidates at the election referred to in said count, or because he had voted or was to vote at said election to the satisfaction of or as directed or suggested by any person or persons, or because he had given in or withheld or was to give in or withhold his ballot for any candidate for Representative in Congress or for any candidate or candidates at such election.

(iv) No one of the several supposed "overt acts," set forth in said count and numbered respectively "(1)," "(2)," "(5)," "(6)," "(7)," "(8)," "(9)," "(10)," "(13)," "(16)," "(17)," "(20)," "(22)," "(26)," "(29)," "(30)," "(31)," "(35)," "(37)," "(38)," "(39)," "(40)," "(43)," "(44)," "(45)," and "(46)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and, in no one thereof, as set forth in said count, does it appear that any money or sum of money, in the statements of said supposed "overt acts" respectively set forth, was or was to be given or had been given to any person, voter, or elector therein referred to, or to any person, voter, or elector to bribe, influence, corrupt, or debauch such person, voter, or elector or as a bribe or reward for voting or having voted at the election mentioned in said count as directed or suggested by any person or persons, or to the satisfaction of any person or persons, or to bribe, influence, or induce him to so vote thereat, or as a bribe or reward for having given in or withheld his ballot for any candidate for Representative in Congress or for any candidate or candidates at said election, or to bribe or induce him to give in or withhold his ballot for any candidate for Representative in Congress or for any candidate or candidates thereat.

(v) No one of the several supposed "overt acts" set forth in said count and numbered respectively from "(11)" to "(40)," both numbers inclusive, and from "(43)" to "(46)," both numbers inclusive, was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and the allegations of said supposed "overt act" numbered "(11)" are uncertain in that the "certain voters" therein referred to are not, nor is any one of them, mentioned by name or described so as to identify the persons therein referred to, nor is it stated that said voters were to the grand jurors unknown, nor does it appear, from the allegations of said supposed "overt act," that said persons or any of them had voted for a candidate for Representative in Congress or for any proposition, candidate, or candidates at the election mentioned in said count, nor that the supposed indication given by the defendant Albert Henry Mathewson that they had "voted right" referred to having voted at said election rather than at some other election or occasion of voting, nor that said indication referred to said voters having voted or omitted to vote for any candidate for Representative in Congress or for any candidate or candidates at said election or referred to any matter, cause, or thing other than said voters having

complied with the law in the manner of their voting; also, so far as appears from said count, John G. Potter, mentioned in said supposed "overt acts" numbered respectively "(12)" and "(13)," Ernest P. Harrington, mentioned in said supposed "overt acts" numbered respectively "(14)," "(15)," "(16)," and "(17)," and Robert L. Congdon, mentioned in said supposed "overt acts" numbered respectively "(23)," "(24)," "(25)," and "(26)," had not, nor had any of them, voted for any candidate for Representative in Congress or for any candidate or candidates at said election, nor, so far as appears from said count, had they or any one of them withheld their votes from any candidate for Representative in Congress or from any candidate or candidates at said election because of any bribe, inducement, direction, reward, or hope of reward; also, so far as appears in said count, William Harney, mentioned in said supposed "overt acts" numbered respectively "(18)," "(19)," "(20)," "(21)," and "(22)," Arthur Battey, mentioned in said supposed "overt acts" numbered respectively "(27)" and "(28)," Henry J. Le Clair, mentioned in said supposed "overt acts" numbered respectively "(29)" and "(31)," Fred McClure, mentioned in said supposed "overt act" numbered "(30)," Samuel Mortimer, mentioned in said supposed "overt acts" numbered respectively "(32)," "(33)," "(34)," and "(35)," Herman Yorke, alias Jake Yorke, mentioned in said supposed "overt act" numbered "(36)," William T. Pierce, mentioned in said supposed "overt acts" numbered respectively "(37)," "(38)," "(39)," and "(40)," Jeffrey Beauchaine, mentioned in said supposed "overt acts" numbered respectively "(43)" and "(44)," and Amede Charpentier, mentioned in said supposed "overt acts" numbered respectively "(45)" and "(46)," had not, nor had any of them, voted or offered or attempted to vote, nor did they or any of them purpose or intend to vote, nor had they or any of them been bribed, directed, influenced, or requested to vote or to withhold their votes or the vote or votes of any one or more of them for any candidate for Representative in Congress, or for any proposition, candidate, or candidates to be voted for at said election; and also, so far as appears from said count, said Fred McClure, mentioned in said supposed "overt act" numbered "(30)," was not qualified to vote at the election mentioned in said count for a candidate for Representative in Congress or for any proposition or candidate thereat; and also, so far as appears in the allegations of the supposed "overt acts" numbered respectively "(36)" and "(37)," the several conversations therein referred to had no reference to said election mentioned in said count.

(vj) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(13)," "(20)," "(21)," "(22)," "(25)," "(26)," "(31)," "(34)," "(35)," "(39)," "(40)," "(44)," and "(46)," so far as appears in said count, was done until after the supposed conspiracy set forth in said count had been consummated.

18. That said first count of said indictment is so unnecessarily voluminous, intricate, and confusing and contains so many indefinite, vague, ambiguous, unrelated, misleading, immaterial, irrelevant, and impertinent allegations and charges, among others, those allegations and charges and the uncertainties and ambiguities therein which are designated and referred to in the last two preceding causes of demurrer numbered "16" and "17," respectively, that it does not inform and does not tend to inform the defendant of the nature and cause of the accusation against him, but, on the contrary, does tend and is liable to confuse, mislead, and prejudice the jury at the trial; and that the defendant should therefore not be required to go to trial on said count, but that said count should be quashed in the interest of justice and a proper regard for the constitutional rights of the defendant under Article VI of amendments to the Constitution of the United States.

19. That the several charges of supposed conspiracy to defraud the United States set forth in said count are not, and each one of them severally is not supported by the allegation of any act done by any party or parties to such supposed conspiracy to effect the object thereof.

To second count.

And the said defendant herein shows to the court the following additional causes of demurrer to the second count of said indictment:

53 20. That the said second count is double in that in said one count it charges the defendants with a supposed conspiracy to defraud the United States set forth in the first paragraph of said count, namely, by means of bribing electors at the election in said count referred to, and also with another supposed conspiracy to defraud the United States set forth in the second paragraph of said count, namely, by committing a wilful fraud upon section 3 of chapter 20 of the General Laws of Rhode Island, 1909.

21. That in addition to the divers uncertainties and ambiguities which are common to both of the counts in said indictment, and for which this defendant has demurred to each of said counts as aforesaid, said second count is so uncertain and ambiguous as to render it impossible for the defendant to understand the several charges therein made against him or to intelligently plead to the same or to properly prepare his defense thereto, in divers additional particulars, among others the following, viz:

(a) In that it does not appear in said count for what candidate or candidates it was agreed by the defendants that electors were to vote or to have voted at the election mentioned in said count in order that the defendants should give or cause to be given to them brass checks with certain stamps thereon, as set forth in said count.

(b) In that it does not appear in said count that it was agreed by the defendants to give such brass checks for giving or withholding

or for having given or withheld a ballot in favor of or against any particular candidate for Representative in Congress or for any candidate whatsoever for that office.

(c) In that it does not appear in said count that it was agreed by the defendants to give such brass checks for voting or not voting or for having voted or not voted for any candidate at said election.

(u) In that it does not appear in said count how or in what manner the United States was to be defrauded by a supposed wilful fraud upon section 3 of chapter 20 of the General Laws of Rhode Island, 1909, as charged in said count.

(v) In that it does not appear in said count how or in what manner a wilful fraud was agreed to be committed upon said section 3 of chapter 20 of the General Laws of Rhode Island, 1909, as charged in said count, or what such supposed wilful fraud was to be.

(w) In that it does not appear in said count how or in what manner the United States was to be defrauded by perverting or obstructing the due administration of said law, as charged in said count.

(x) In that it does not appear in said count how or in what manner said law was to be perverted or obstructed, as charged in said count.

(y) In that it does not appear how, in what manner, or by what means the defendants, or any of them, did cause, bring about, or assist in the maladministration of said law, or did fraudulently and corruptly administer, enforce, or cause or procure the fraudulent and corrupt administering and enforcing of said law, on the day of said election, as charged in said indictment.

(z) In that it does not appear in said count what person or persons did cause, bring about, or assist in the maladministration of said law, or did fraudulently and corruptly administer, enforce, and cause and procure the fraudulent and corrupt administering and enforcing of said law on the day of said election.

(kk) In that it does not appear in said count how or in what manner or by what means it was the intention of said defendant to deprive the United States of its supposed right to a fair and clean election in said town of Coventry on said November 3rd, A. D. 1914, as charged in said count.

54 (ll) In that it does not appear in said count how or in what manner it was the intention of the said defendant to obstruct, impair, corrupt, and debauch said election, as charged in said indictment.

(mm) In that it does not appear how or in what manner the supposed obstructing, impairing, corrupting, and debauching of said election, as set forth in said count, was to deprive the United States of its supposed lawful right to have a Representative in Congress, who was to be voted for at said election, elected in accordance with law.

(nn) In that it does not appear in said count how or in what manner it was intended by the defendant to prevent the lawful election of a Representative in Congress at said election.

(oo) In that the words "elected fairly," as set forth in said count, are uncertain and ambiguous and do not apprise the defendant with certainty of what is intended thereby.

(pp) In that it does not appear from said count what supposed right, other than to have a Representative in Congress lawfully elected, is asserted or intended to be asserted in said count by the use of the words "lawful right to have a Representative in Congress * * * * elected fairly and in accordance with law."

(qq) In that it does not appear in said count how or in what manner it was intended by the defendants, or any of them, to prevent the election "fairly and in accordance with law" of a Representative in Congress, as charged in said indictment.

22. That, in addition to the divers uncertainties and ambiguities which are common to both of the counts of said indictment, and for which this defendant has demurred to each of said counts as aforesaid, and in addition to the divers other uncertainties and ambiguities in the charging portions of said second count, referred to in the next preceding cause of demurrer as above set forth, the said second count is further vague, uncertain, and ambiguous in its allegations of acts supposed to have been done by one or more of the parties to a supposed conspiracy set forth in said count, to effect the object of such conspiracy, which supposed acts in said count are designated as "overt acts," the same, as set forth in said count, not appearing to have been done to effect the object of such conspiracy, and either not appearing to have any relevancy to such supposed conspiracy or being allegations of supposed facts, which severally, if proved, might tend, with further evidence, to show the commission of an act or acts to effect the object of the supposed conspiracy, but which, of themselves and as stated in said count, do not constitute such an act or acts.

Among the aforesaid uncertainties and ambiguities are the following, viz:

(j) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(1)," "(2)," "(3)," "(4)," "(5)," "(6)," "(7)," "(8)," "(9)," "(10)," "(41)," "(42)," and "(47)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count, but, on the contrary, so far as said several supposed "overt acts," as therein alleged are relevant to the supposed offense charged in said count, the same, respectively, pertain to the supposed conspiracy itself and do not constitute an act or acts to effect the object thereof.

(ij) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(1)," "(2)," "(11)," "(14)," "(16)," "(17)," "(18)," "(23)," "(29)," "(30)," "(32)," "(37)," "(38)," "(39)," "(40)," "(43)," "(44)," "(46)," and "(47)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count, and, on the contrary, each one of said supposed "overt acts," as in said count charged, as

far as appears therein is not relevant to the offense charged in said count.

55 (iij) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(), " (4)," " (5)," " (6)," " (7)," " (8)," " (9)," " (10)," " (12)," " (13)," " (15)," " (16)," " (19)," " (20)," " (21)," " (22)," " (24)," " (25)," " (26)," " (27)," " (28)," " (29)," " (30)," " (31)," " (33)," " (34)," " (35)," " (36)," " (41)," and " (42)," was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and in no one thereof, as set forth in said count, does it appear that the brass checks, therein respectively charged to have been given or delivered or directed to be given, were, or that any such brass check was proposed or directed to be given or had been given or offered to be given to bribe, influence, corrupt, or debauch any voter or elector or to induce or hire him to vote as directed or suggested by any person or persons, or to the satisfaction of any person or persons, or to give in or withhold his vote for any candidate for Representative in Congress or for any candidate or candidates at the election referred to in said count, or because he had voted or was to vote at said election to the satisfactin of or as directed or suggested by any person or persons, or because he had given in or withheld or was to give in or withhold his ballot for any candidate for Representative in Congress or for any candidate or candidates at such election.

(iv) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, " (1)," " (2)," " (5)," " (6)," " (7)," " (8)," " (9)," " (10)," " (13)," " (16)," " (17)," " (20)," " (22)," " (26)," " (29)," " (30)," " (31)," " (35)," " (37)," " (38)," " (39)," " (40)," " (43)," " (44)," " (45)," and " (46)," was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and in no one thereof, as set forth in said count, does it appear that any money or sum of money, in the statements of said supposed "overt acts" respectively set forth, was or was to be given or had been given to any person, voter, or elector therein referred to, or to any person, voter, or elector to bribe, influence, corrupt, or debauch such person, voter, or elector or as a bribe or reward for voting or having voted at the election mentioned in said count as directed or suggested by any person or persons, or to the satisfaction of any person or persons, or to bribe, influence, or induce him to so vote thereat, or as a bribe or reward for having given in or withheld his ballot for any candidate for Representative in Congress or for any candidate or candidates at said election, or to bribe or induce him to give in or withhold his ballot for any candidate for Representative in Congress or for any candidate or candidates thereat.

(v) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, from " (11)" to " (40)," both numbers inclusive, and from " (43)" to " (46)," both numbers inclusive, was, so far as appears in said count, an act done to effect the

object of a supposed conspiracy set forth in said count; and the allegations of said supposed "overt act" numbered "(11)" are uncertain in that the "certain voters" therein referred to are not, nor is any one of them, mentioned by name or described so as to identify the persons therein referred to, nor is it stated that said voters were to the grand jurors unknown, nor does it appear, from the allegations of said supposed "overt act," that said persons or any of them had voted for a Candidate for Representative in Congress or for any proposition, candidate, or candidates at the election mentioned in said count, nor that the supposed indication given by the defendant Albert Henry Mathewson that they had "voted right" referred to having voted at said election rather than at some other election or occasion of voting, nor that said indication referred to said voters having voted or declined to vote for any candidate for Representative in Congress or for any candidate or candidates at said election, or referred to any matter, cause, or thing other than said voters having complied with the law in the manner of their voting; also, so far as appears from said count, John G. Potter, mentioned in said supposed "overt acts" numbered, respectively, "(12)" and "(13)," Ernest P. Harrington, mentioned in said supposed "overt acts" numbered, respectively, "(14)," "(15)," "(16)," and "(17)," and Robert L. Congdon, mentioned in said supposed "overt
56 acts" numbered, respectively, "(23)," "(24)," "(25)," and "(26)," had not, nor had any of them, voted for any candidate for Representative in Congress or for any candidate or candidates at said election, nor, so far as appears from said count, had they or any one of them withheld their votes from any candidate for Representative in Congress or from any candidate or candidates at said election because of any bribe, inducement, direction, reward, or hope of reward; also, so far as appears in said count, William Harney, mentioned in said supposed "overt acts" numbered, respectively, "(18)," "(19)," "(20)," "(21)," and "(22)," Arthur Battey, mentioned in said supposed "overt acts" numbered, respectively, "(27)" and "(28)," Henry J. LeClair, mentioned in said supposed "overt acts" numbered, respectively, "(29)" and "(31)," Fred McClure, mentioned in said supposed "overt act" numbered "(30)," Samuel Mortimer, mentioned in said supposed "overt acts" numbered, respectively, "(32)," "(33)," "(34)," and "(35)," Herman Yorke (alias Jake Yorke), mentioned in said supposed "overt act" numbered "(36)," William T. Pierce, mentioned in said supposed "overt acts" numbered, respectively, "(37)," "(38)," "(39)," and "(40)," Jeffery Beauchaine, mentioned in said supposed "overt acts" numbered, respectively, "(43)" and "(44)," and Amede Charpentier, mentioned in said supposed "overt acts" numbered, respectively, "(45)" and "(46)," had not, nor had any of them, voted or offered or attempted to vote, nor did they or any of them purpose or intend to vote, nor had they or any of them been bribed, directed, influenced, or requested to vote or to withhold their votes or the vote or votes of any one or more of them for any candidate for Representative in

Congress, or for any proposition, candidate, or candidates to be voted for at said election; and also, so far as appears from said count, said Fred McClure, mentioned in said supposed "overt act" numbered "(30)," was not qualified to vote at the election mentioned in said count for a candidate for Representative in Congress or for any proposition or candidate thereat; and also, so far as appears by the allegations of the supposed "overt acts" numbered, respectively, "(36)" and "(37)," the several conversations therein referred to had no reference to said election mentioned in said count.

(vj) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(13)," "(20)," "(21)," "(22)," "(25)," "(26)," "(31)," "(34)," "(35)," "(39)," "(40)," "(44)," and "(46)," so far as appears in said count, was done until after the supposed conspiracy set forth in said count had been consummated.

23. That the charge of supposed conspiracy to defraud the United States set forth in said count is not supported by the allegation of any act done by any party or parties to such supposed conspiracy to effect the object thereof.

By his attorney:

WALTER H. BARNEY.

57 The above-entitled case was called for hearing before the Honorable Arthur L. Brown, United States District Judge, on the indictment and demurrers thereto on, to wit, April 10 and 15, 1916, and was fully heard and argued by the attorneys for the respective parties. The opinion of the court sustaining the demurrers was filed on July 28, 1916, and is in the following language:

58 District Court of the United States, District of Rhode Island.

UNITED STATES	} Indictment No. 114.
v.	
MATTHEW T. GRADWELL ET ALS.	

Opinion on demurrer to indictment, July 28, 1916.

Brown, J. This is an indictment under section 37 of the Criminal Code, charging a conspiracy to defraud the United States by corrupting a general election at which a Representative in Congress was voted for and elected.

The fundamental question is whether this conspiracy statute is to be so broadly construed as to comprehend a conspiracy of this character.

It is not contended that the conspiracy was to commit any offense against the United States, but the indictment rests upon the words "to defraud the United States in any manner or for any purpose." It is well settled that these words are broad enough to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of the Government; U. S. v. Barnow, 239 U. S. 74, 79; Haas v. Henkel, 216 U. S. 462, 479; U. S.

v. Plyler, 222 U. S. 15; U. S. v. Curley, 122 Fed. 738, 130 Fed. 1; but these and all cases cited, except one, relate to functions of the organized Government and not to a step in the organization of the Government.

But a single case has been cited in which the statute has been extended to include fraud in the election of a Member of Congress; U. S. v. Aczel et al, 219 Fed. 917, 921, 923, 984, 938. The learned judge, after a consideration of Curley v. U. S., 130 Fed. 1, 122 Fed. 738, and Haas v. Henkel, 216 U. S. 462, expressed the opinion that

59 "If a conspiracy which is calculated to * * * destroy the value of the operations and reports of the Bureau of Statistics of the Department of Agriculture as fair, impartial, and reasonably accurate, would be to defraud the United States by depriving it of its lawful right and duty of promulgating or diffusing the information so officially acquired in the way and at the time required by department regulations, it is perfectly plain that a conspiracy which is calculated to obstruct and impair, corrupt, and debauch an election where Senators and Representatives in Congress are to be elected, would be to defraud the United States by depriving the Government itself of its lawful right to have such Senators and Representatives elected fairly and in accordance with the law."

Apparently the opinion proceeds on the assumption of an analogy between the obstruction of operations of the constituted Government and obstruction of an election by which the people of the State make their choice of Representatives in Congress. Whether such assumption is justified requires careful examination and further consideration.

Assuming that the United States has such an interest in the election of a Representative in Congress as gives it constitutional power to pass statutes safe-guarding such an election, no such statute is involved, and in the present case we are not directly concerned with any other existing statute passed by Congress to this end. The question is whether section 37 of the Criminal Code, in its inclusion of conspiracies to defraud, was intended as a statute for the protection of elections for Representatives in Congress as well as for the protection of operations of the organized Government.

The existence of a constitutional power in Congress to legislate in respect to the conduct of those elections whereby the people of a particular State choose their Representatives in Congress is of slight assistance in determining whether, by this conspiracy statute, it was intended to do so.

For many years this power was reserved and was not exercised.

In the dissenting opinion of Mr. Justice Lamar in U. S. v. Moseley, 238 U. S. 388, is a reference to the legislation under this
60 power, and to the report of the committee (House Report, No. 18, 53rd Congress, 1st section) as to the policy of Federal legislation concerning elections held under State laws. See also Ex Parte Siebold, 100 U. S. 371; Ex Parte Clarke, 100 U. S. 309.

The question of protecting the United States against the class of frauds which involve merely the relations of the offender and the United States, and the question of legislating respecting the conduct of the elections whereby the people of the respective States choose their Representatives in Congress are substantially distinct; so distinct in substance that it is highly improbable that it was intended to legislate on both together. The Curley case, 122 Fed. 738, 130 Fed. 1; Haas v. Henkel, 216 U. S. 462, 479; and the cases other than the Aczel case, involved no consideration of the relations between State and National Governments, or of the political policy of exercising the constitutional power of Congress to legislate concerning the elections which are primarily the act of the people of the States in choosing their Representatives.

It is of course possible, by the use of abstract terms, to bring under a single classification things which are practically and substantially different. It is not enough, however, that the United States may be able to show that a violation of a constitutional right of the United States was contemplated by conspirators. We must find other than a verbal justification for giving to section 37 of the Criminal Code so broad a scope. It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute because not within its spirit nor within the intention of its makers; *Holy Trinity Church v. U. S.*, 143 U. S. 457, 459.

The right of the United States in respect to these elections is a constitutional right to legislate or not to legislate as is deemed
61 expedient or necessary. With this right, or with its exercise, no interference is charged in the indictment. But it is said that there is also in the Government a right to have its Senators and Representatives elected fairly and in accordance with law, even when Congress has not legislated to define the right. It is inaccurate to say that the indictment charges a conspiracy to defraud the Government of this right, nor can it be said that it is charged that the United States is obstructed in the performance of any active function in respect to this right. It may be said that this theoretical right is violated by doing what is inconsistent with it, and that a violation of the right is in a sense a fraud upon the United States. But in the inquiry whether section 37 was intended to vindicate this right, or to afford protection against its violation, we may consider what protection is otherwise afforded.

In *Ex parte Siebold*, 100 U. S., 392, it was said:

"As a general rule, it is no doubt expedient and wise that the operations of the State and National Governments should, so far as practicable, be conducted separately, in order to avoid undue jealousies and jars and conflicts of jurisdiction and power. But there is no reason for laying this down as a rule of universal application."

In the dissenting opinion in *Ex parte Clarke*, 100 U. S., 420, Mr. Justice Field emphasizes the interest of the States in maintaining the purity of such elections and says:

"I do not think that any apprehension need be felt if the supervision of all elections in their respective States should also be left to them."

This is a statement of a political policy which seems generally to have prevailed over the opposite policy by the repeal of the statutes which were adopted in reconstruction times.

In considering whether section 37 was intended as an exercise of constitutional power to protect against fraud in State elections it is proper to consider that the so-called right of the United States to have duly chosen Representatives in Congress is safeguarded by the primary interest of the people of the States in this respect, and by the laws of the States; and that for this reason congressional legislation on the subject generally has been regarded as unnecessary.

It can not be said that Congress was under any positive duty to legislate for the protection of State elections for Members of Congress, or that there is any presumption of an intent to do so. But the right of the United States to duly elected Congressmen is protected by the Constitution itself in a provision which indicates distinctly the policy of excluding questions of this character from the jurisdiction of the courts as well as of avoiding conflict between State and National Governments, even though the right of Congress to legislate, if necessary, is reserved.

The House of Representatives is made the final judge of the elections, returns, and qualifications of its own Members. The Representatives of all the other States pass upon the question whether the Representative of a particular State has been duly elected. The apparent intent was to remove such questions from executive, judicial, or even legislative control, and to confide them to the Representatives directly chosen by the people. The United States can not be defrauded by the payment of a salary to one whose right to a seat is formally established by the House.

This constitutional provision is the ultimate protection of the United States in its so-called right to have duly elected Representatives.

It is urged that the conspiracy is to deceive and defraud the House of Representatives, a body made up of officers of the United States. In *Lamar v. U. S.*, May 1, 1916, it was held by the Supreme Court that a Member of the House was a legislative officer, and that section 32 of the Criminal Code was applicable to false personation of such an officer. But, as was said in the opinion, the issue in that case was not a constitutional one, but of statutory construction.

Nothing in that opinion serves to abolish the clear distinction pointed out in *Burton v. U. S.*, 202 U. S., 344, 369, 370, between offices created by or existing under the direct authority of the National Government, as organized under the Constitution, and offices the appointments to which are made by the States acting

separately, albeit proceeding in respect to such appointments under the sanction of that instrument. It was said:

"While the Senate, as a branch of the legislative department, owes its existence to the Constitution and participates in framing laws that concern the entire country, its members are chosen by State legislatures and can not properly be said to hold their places 'under the Government of the United States.'"

Primarily a fraud upon a State election for Representatives in Congress is a fraud upon the right not of the United States Government but of the people of a particular State. It may be a fraud on the elective franchise and civil rights of citizens, and the extent to which Congress has exercised its constitutional right in that respect is defined in chapter 3 of the Criminal Code, which is not here invoked.

In chapter 4 "Offenses against the operations of the Government" are treated as a distinct classification, though it may be said that the chapter includes also a section relating to Federal elections, etc. Section 37, which is included in chapter 4, can be given full effect as a statute for the protection of the operations of the Organized Government. If we regard it as a statute relating to the first steps which are taken by the citizens of States in the choice of Representatives and in the organization of the Government, we then may have the United States asserting in the courts the illegality of the action of the people of the State in the choice of Representatives, and this in spite of the constitutional provision that the ultimate decision of the question is not entrusted to any one of the departments of the Government, either executive, judicial, or legislative, but to a special tribunal—the House itself.

It does not matter that the charge is only of conspiracy to elect illegally and of overt acts in pursuance of that conspiracy. If
64 bribery in State elections is not made a Federal offense because of the primary interest of the States in protecting their own elections and because of the provision of a special constitutional tribunal for the trial and settlement of such questions, the same reasons exist against trials for conspiracy to bribe. A charge of a conspiracy to bribe, with bribery as an overt act, may bring before the court substantially the same questions as if the statute were directly against bribery.

The political considerations of the relation between the people of the State and the National Government are substantially the same in both cases.

If, for reasons of public policy, the constitutional power to legislate in the one case has been reserved, it seems inconsistent that it should have been exercised in the other.

Every completed bribery could be charged as a conspiracy to bribe, with overt act of bribery, and thus the courts might be required to adjudicate upon the same matters that are to come before the House or upon which the House already has decided. The rule that

the judicial tribunals must not hamper or embarrass the other departments by prejudging the questions which they will have to decide, or attempting to review the decisions already made (Black's Const. Law, p. 85), affords also a reason for adopting a construction restricting section 37 to frauds affecting the operations of Government and for not extending it to frauds affecting the action of the people of a particular State toward organizing the Government by the election of Representatives.

The policy of leaving to the States themselves the control of elections for presidential electors and of providing for frauds in such elections (see *In re Green*, 134 U. S., 377, 380), seems consistent with the same policy respecting Representatives in Congress.

65 Yet the argument of the United States as to the scope of section 37 would require that a conspiracy to commit fraud in the election of presidential electors should be included.

The right to "duly elected Congressmen" is of the same nature as the right to a duly elected President and Vice President, etc.

In fact, if a violation of a theoretical constitutional right of the Government not declared by statute is to be deemed a fraud, the conspiracy statute will be so broadened as to expand it beyond the scope of legislative foresight. Repugnancy to a reserved constitutional power of Congress to enact law can hardly be a practical test of fraud. Inconsistency with what Congress has power to protect, but has not protected, by law, or with reasons why it might legislate if it saw fit, is not a satisfactory test of what shall constitute a defrauding of the United States under section 37.

As the defendants' brief points out, there is a sharp and clear distinction between a conspiracy to obstruct the administration of a law of the United States and a conspiracy which affects the constitution of one of the great departments of Government. While there are two sides to the matter, one State and one National, the interest of the United States is so well protected otherwise that it cannot be presumed that the conspiracy statute was enacted with any thought of the application which the Government now seeks to make. To so apply the statute takes it out of the definite sphere of protecting and assisting the operation of organized government, into the distinct sphere of State action in performing what is peculiarly a State function—the choice of State Representatives in Congress. It also confers upon the courts an extensive jurisdiction in respect to political matters, with the risk of judicial decisions at variance with the decisions of the tribunal which has power of final decision.

66 It might so affect a candidate for Representative, or a Representative elect, or even a presidential elector, as to impose upon him the duty of appearing in court for vindication of his rights or his character, though the Constitution has provided another tribunal for that purpose, and though statutes have provided a procedure differing from that of the courts. It would impose upon the Executive and upon the Department of Justice the duty of enforcing the law,

of making the necessary investigations, and would bring that one of the executive departments into the control of prosecutions affecting the constitution of a branch of the legislative department.

Aside from the opportunity which would be afforded for making the courts an instrument for influencing political matters we may consider that as a consequence we may have a conspiracy to corrupt a State election tried before the United States Court of another district and in another State. Under the decision in *Hyde v. U. S.*, 225 U. S. 347, overt acts performed in one district by one of the conspirators give jurisdiction to the court of that district as to all the conspirators. This would give to the Department of Justice an opportunity to select a place of trial in some State remote from the actual place of conspiracy, or from the State in which the Representative was elected, because of the commission of some overt act, such as the writing of a letter by one of the conspirators in furtherance of the conspiracy.

It is impossible to believe that in extending the conspiracy statute to embrace frauds other than those upon the revenue it ever occurred to any Members of Congress that they were legislating upon the subject of congressional or presidential elections, or that questions of public policy as to the relations between State and Nation were involved. This subject is so important, and of such special character, that it would have been dealt with specifically and not in an omnibus clause, had it been intended to deal with it at all.

67 The present indictment in my opinion is founded upon an undue extension of the conspiracy act, which carries it beyond its proper sphere and brings it into direct conflict with the policy of noninterference in State elections for Representatives in Congress; a policy evidenced by the general course of legislation or nonlegislation on the subject of the relations of State and National Government in respect to bribery at congressional elections.

Because the subject matter of the regularity of State elections for Representatives is so substantially different from that of any of the other cases of fraud which have been held to be within the conspiracy statute, because the rights of the United States in such an election are to be determined by the House of Representatives itself, and are to be protected by the States which have the primary interest and a more direct interest than the Government itself in the choice of Representatives, because the questions are to such an extent political questions, and for other reasons above stated, I am of the opinion that section 37 can not be so construed as to include the matters set forth in this indictment.

I am, therefore, of the opinion that the demurrers must be sustained on the fundamental ground.

If we assume, however, that section 37 covers a conspiracy to corrupt a State election for Representatives in Congress by bribery of voters, there will remain the question whether this indictment properly charges such a conspiracy. The briefs deal with this matter

at great length, but only a part of the arguments need be considered.

68 It is charged that the defendants conspired "to defraud the United States by corrupting and debauching the general election held in the town of Coventry * * * the third day of November, 1914, at which said election a candidate for Representative in Congress was voted for, chosen, and elected," etc., in manner following:

"Said defendants did devise a scheme to bribe, influence, corrupt, and debauch the voters of the town of Coventry on, to wit, the third day of November, 1914, at which time and place a general election was held for the election of State officers and for a Representative in Congress."

The indictment proceeds to charge "as a part of said conspiracy" various subconspiracies, so to speak, several of which have no apparent or direct relation to the election of a Representative in Congress, but relate to corruption of the so-called general election. One "part of said conspiracy" is to bribe and to vote qualified electors for Representative in Congress. Then follow, as "parts of said conspiracy," charges of conspiracy to defraud by committing a "wilful fraud" upon art. 1, sec. 2 of the Constitution; sec. 2 of chap. 123 of the General Laws R. I., 1909, relating to liquor licenses and other topics; sec. 8, chap. 20, of the General Laws R. I., 1909, respecting bribery at elections; and various other matters too numerous for brief statement. There follows an allegation that in pursuance of "said unlawful and felonious conspiracy," etc., and to effect the object of the same, certain acts were done. The overt acts are thus connected not with any specific part of the conspiracy, but with the one main conspiracy; i. e., to corrupt the "general election."

It is impossible to reject as surplusage those charges which are relate to the election for Representatives in Congress or to the election for State officers.

It is impossible to reject as surplusage those charges which are not connected with the election for Representative in Congress, or those charges which ambiguously refer to "a general election,"
69 comprehending the State officers as well as a Representative in Congress.

By thus confusing elections over which Congress has no control and elections over which it may constitutionally exercise control, and by referring the overt acts to an equivocal unit, the "general election," we have irrelevant and relevant matters so firmly entangled that it seems impossible to extricate them. The allegations which do not appear to have a connection with, or are only argumentatively connected with, the election of Representative, can not be rejected, for if this were done it would be impossible to say whether in the opinion of the grand jury the overt acts were in pursuance of what was rejected or of what was retained.

Were this indictment to stand it would be possible for the United States to introduce a large amount of evidence relating to the elec-

tion of State officers, or to other State matters, or of so ambiguous a character that to what it did relate could only be guessed.

The decision in *re Coy*, 127 U. S., 731, which relates to returns covering both State and Federal elections, affords not the slightest support for this indictment, or for the theory of a "general election" upon which it is drawn. On the contrary, it is essential that the indictment should be strictly confined to the election for Representatives and should avoid all confusion with State elections. *Blitz v. U. S.*, 153 U. S., 308; *U. S. v. Morrissey*, 32 Fed., 147, 152.

I am of the opinion, therefore, that the indictment is demurrable also on the ground that the indictment is so vague, uncertain, insufficient, and duplicitous in its allegations that the defendants are not sufficiently apprised of the nature of the charge against them to enable them to prepare their defense thereto. Even if it be a crime under section 37 to conspire to corrupt an election for a Representative in Congress, I am of the opinion that the defendants
70 would be deprived of their right to be informed of the nature of the offense by putting them to trial upon this indictment.

I desire to acknowledge the great diligence, research, and ability shown alike by counsel for the United States and for the defendants in the preparation of the comprehensive briefs upon the important questions that are raised in this case.

For the reasons stated in the opinion the demurrers are sustained.

And on, to wit, August 24, 1916, there was entered the following:

71 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rath- bun, Lewell Whitman, Samuel Franklin, Al- bert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, defendants.	} Indictment #114. Violation of sec- tion 37, Crimi- nal Code.
--	---

Order sustaining demurrers to indictment. (Entered Aug. 24, 1916.)

This cause having come on to be heard upon the demurrers of the defendants to the indictment, and having been argued by counsel,

It is considered that said demurrers be, and the same hereby are, sustained to each count of the indictment.

Entered as the order of this court this 24 day of August, A. D. 1916.

WILLIAM P. CROSS, *Clerk.*

Enter August 24, 1916.

ARTHUR L. BROWN,

*United States District Judge for the
District of Rhode Island.*

72 Thereafter, to wit, on August 24, 1916, there were filed by the plaintiff a petition for writ of error and assignment of errors, and the petition was allowed and the writ of error issued on said day.

And thereafter on, to wit, August 24, 1916, a citation was issued returnable at the Supreme Court of the United States in the city of Washington, in the District of Columbia, on the 22nd day of September next.

73 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.

Violation of sec-
tion 37, Crimi-
nal Code.

Petition for a writ of error. (Filed August 24, 1916.)

To the honorable Arthur L. Brown, judge of said court:

Now comes the United States of America, by Harvey A. Baker, United States attorney for the District of Rhode Island, and respectfully shows to the court that on the twenty-fourth day of August, A. D. 1916, the court made an order in said cause sustaining the demurrers of the defendants to the indictment in said cause, and your petitioner, feeling itself aggrieved by the said ruling of the court, entered therein as aforesaid, herewith petitions the court for an order allowing the petitioner to prosecute a writ of error to the Supreme Court of the United States under the law (act approved March 2, 1907, 34 Statutes at Large, page 1246) in such case made and provided.

The premises considered, your petitioner prays that a writ
74 of error be issued in this behalf to the Supreme Court of the United States, sitting at Washington, D. C., for the correction of the errors complained of and hereby assigned.

HARVEY A. BAKER,

United States Attorney, for Petitioner in Error.

75 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.

Violation of sec-
tion 37, Crimi-
nal Code.

Order allowing writ of error. (Entered August 24, 1916.)

The foregoing cause coming on to be heard upon petition for writ of error and assignment of errors submitted herewith, it is upon

consideration thereof ordered that said petition be granted and writ of error allowed.

Entered as the order of this court this 24 day of August, A. D. 1916.

WILLIAM P. CROSS, *Clerk.*

Enter August 24, 1916.

ARTHUR L. BROWN,

United States District Judge for the District of Rhode Island.

76 In the United States District Court for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.
Violation of sec-
tion 37, Crimi-
nal Code.

Assignment of errors. (Filed August 24, 1916.)

Now comes the United States of America, plaintiff in said cause, by Harvey A. Baker, United States attorney for the district of Rhode Island, and in connection with the plaintiff's petition for a writ of error in this cause, assigns the following errors upon which plaintiff in error relies to reverse the judgment of the court herein, as appears of record, to wit:

I.

The court erred in sustaining the demurrers to each count of the indictment in said cause.

II.

The court erred in holding that the conspiracy to defraud the United States set out in each count of the indictment is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

77

III.

The court erred in holding that the conspiracy to defraud the United States set out in each count of the indictment related not to the functions of organized government but to a step in the organization of the Government.

IV.

The court erred in holding that a conspiracy to defraud the United States relating to a step in the organization of government is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

V.

The court erred in holding that section 37 of the Criminal Code in its inclusion of conspiracies to defraud the United States was not intended as a statute for the protection of elections for Representative in Congress.

VI.

The court erred in holding that a conspiracy to deprive the United States of the right to have its Representatives in Congress elected by the people secured to the United States by section 2 of article 1 of the Constitution is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

VII.

The court erred in holding that each count of the indictment did not set out a conspiracy to defraud the United States of the
78 right to have its Representatives in Congress elected fairly and in accordance with law, punishable under section 37 of the Criminal Code.

VIII.

The court erred in holding that a conspiracy to defraud the United States of the right to have its Representatives in Congress elected fairly and in accordance with law is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

IX.

The court erred in holding that a conspiracy to fraudulently procure the statutory salary of a Representative in Congress for a man who was to be illegally and fraudulently elected is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

X.

The court erred in holding that a conspiracy to deceive and defraud the House of Representatives is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XI.

The court erred in holding that a conspiracy to procure the election and return of a Member of the House of Representatives by means of the bribery of persons qualified to vote for Representative in Congress is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

79

XII.

The court erred in holding that a conspiracy to violate in the conduct of an election for a Representative in Congress the State laws against bribery of electors made for the protection of elections of Representatives in Congress is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XIII.

The court erred in holding that a conspiracy to deprive the United States of the protection of the State laws against bribery in the election of Representatives in Congress is not a conspiracy to defraud the United States punishable under section 37 of the Criminal Code.

XIV.

The court erred in holding that a conspiracy to violate a constitutional right of the United States not declared by statute is not such a conspiracy to defraud as is punishable by section 37 of the Criminal Code.

XV.

The court erred in holding that section 37 of the Criminal Code was not intended as an exercise of constitutional power to protect the United States against fraud in elections of Representatives in Congress.

XVI.

The court erred in holding that the House of Representatives is a special constitutional tribunal for the trial and settlement of bribery in the elections of Representatives in Congress.

80

XVII.

The court erred in holding that a fraud upon a State election for Representative in Congress primarily is not a fraud upon the right of the United States but of the people of the particular State.

XVIII.

The court erred in holding that the House of Representatives is not a body made up of officers of the United States.

XIX.

The court erred in holding that a conspiracy to deprive the United States of its right to a duly elected Congressman is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XX.

The court erred in holding that each count of the indictment did not set forth a plan to defraud the United States, which is punishable under section 37 of the Criminal Code, for the reason that it carries the conspiracy statute beyond its proper sphere and brings it into direct conflict with the policy of noninterference in State elections for Representative in Congress.

XXI.

The court erred in holding that section 37 of the Criminal Code can not be construed so as to include the matters set forth in this indictment.

81

XXII.

The court erred in holding that a conspiracy, which included as one of the purposes of the plan to defraud the United States the corruption of the election of a Representative in Congress and as another purpose the corruption of the election of State officers, who were to be elected at the same time, is not a conspiracy to defraud the United States punishable under section 37 of the Criminal Code.

XXIII.

The court erred in holding that the acts alleged to have been done to effect the object of the conspiracy, i. e., the overt acts alleged in each count of the indictment, were not good overt acts within the meaning of section 37 of the Criminal Code.

XXIV.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act required by section 37 of the Criminal Code, must, where the plan of the conspiracy includes several ends and purposes, be an act in itself done to accomplish the end and purpose of the plan which is criminal.

XXV.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act required by section 37 of the Criminal Code, must, where the plan of the conspiracy includes several ends and purposes, be an act in itself done to accomplish the end and purpose of the plan on which the jurisdiction of court is based.

82

XXVI.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act, required by section 37 of the Criminal Code, is not a good overt act within the meaning of section 37 of the Criminal Code where it is an act that tends to accomplish the entire plan, which plan has several purposes, part of which are criminal and part of which are innocent.

XXVII.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act required by section 37 of the Criminal Code, must be an act that in itself shows criminality.

XXVIII.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act required by section 37 of the Criminal Code, must be an act that in itself shows jurisdiction.

XXIX.

The court erred in holding that it must appear in what manner the acts done to effect the object of the conspiracy, i. e., the overt acts alleged in accordance with the requirements of section 37 of the Criminal Code, would tend to effect the object of the conspiracy.

83

XXX.

The court erred in holding that under section 37 of the Criminal Code the act done to effect the object of the conspiracy, i. e., the overt act alleged, must show in what manner it would tend to effect the object of the conspiracy on which the jurisdiction of the court was based where there were several objects to the conspiracy set out, some of which were criminal by virtue of the jurisdiction of the court and some innocent.

Wherefore the United States of America, as plaintiff in error, prays that the judgment of said court be reversed.

HARVEY A. BAKER,
United States Attorney.

84 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.
Violation of sec-
tion 37, Crimi-
nal Code.

Præcipe.—Directions to clerk to make up transcript.

To William P. Cross, Esq., clerk of the United States District Court for the District of Rhode Island:

You are hereby requested to prepare a transcript of record to be filed in the Supreme Court of the United States, pursuant to the writ of error allowed in the above-entitled cause, and including in such transcript of record the following and no other papers, to wit:

1. The writ of error.
 2. The indictment filed in said cause on June 28, 1915.
 3. The demurrers of the defendants to said indictment filed on November 24, 1915.
 4. The order and final judgment rendered in said court on August 24, 1916, sustaining the demurrers to the indictment.
 5. The petition for a writ of error.
 6. The order granting the writ of error.
 - 85 7. Assignment of errors.
 8. Citation on writ of error.
 9. Præcipe.
 10. The opinion of the court giving its reasons for sustaining said demurrers.
 11. Clerk's certificate.
- And you will omit all other papers.

HARVEY A. BAKER,
United States Attorney for Plaintiff in Error.

Citation of writ of error.

UNITED STATES OF AMERICA, ss:

The President of the United States to Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun, Lewell Whitman, Samuel Franklin, Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, in the District of Columbia, on the 22d day of September next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Rhode Island, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, judge of the District Court of the United States for the District of Rhode Island this twenty-fourth day of August, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

ARTHUR L. BROWN,
*United States District Judge,
District of Rhode Island.*

87 I hereby, this 25th day of August, 1916, accept due and legal personal service of this citation on behalf of Mathew T. Gradwell, James Rathbun, George Warner, and Albert Henry Mathewson, defendants, and acknowledge receipt of the præcipe for making transcript and assignment of errors.

WALTON H. BARNEY,
Counsel for said Defendants.

I hereby, this 25th day of August, 1916, accept personal service of this citation on behalf of Ellery Hudson, Irving Hudson, and Earl Dodge, defendants, and acknowledge receipt of the præcipe for making transcript and assignment of errors.

ALEXANDER L. CHURCHILL,
Counsel for said Defendants.

I hereby, this 25th day of August, 1916, accept due and legal personal service of this citation on behalf of George Kresgie, Lewell Whitman, John Colvin, and Charles Keach, defendants, and acknowledge receipt of the præcipe for making transcript and assignment of errors.

CHARLES A. WALSH,
Counsel for said Defendants.

I hereby, this 25th day of August, 1916, accept due and legal personal service of this citation on behalf of Jesse Carr and Samuel Franklin, defendants, and acknowledge receipt of the praecipe for making transcript and assignment of errors.

WAYNE H. WHITMAN,
Counsel for said Defendants.

I hereby, this 25th day of August, 1916, accept due and legal personal service of this citation on behalf of Emanuel Carpenter, defendant, and acknowledge receipt of the praecipe for making transcript and assignment of errors.

JAMES E. DOOLEY,
Counsel for Emanuel Carpenter.

(Indorsed:) In the District Court of the United States, for the District of Rhode Island. United States of America, plaintiff, vs. Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun, Lewell Whitman, Samuel Franklin, Albert Henry Mathewson, George Wagner, Charles, Keach and Earl Dodge, defendants. Citation on writ of error. Filed August, 1916. Clerk.

88

Clerk's certificate.

UNITED STATES OF AMERICA,
District of Rhode Island, ss:

I, William P. Cross, clerk of the District Court of the United States for the District of Rhode Island, do hereby certify that the foregoing is a true copy of the record and all the proceedings had in an indictment entitled No. 114, United States of America, plaintiff, vs. Mathew T. Gradwell, et als., defendants., in the District Court determined, together with the plaintiff's petition for writ of error, order allowing same, assignment of errors, the opinion of the district court, praecipe, the original citation on appeal with the acknowledgment of service indorsed thereon.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Providence, in said district, this 12th day of September, A. D. 1916.

[SEAL.]

WILLIAM P. CROSS, *Clerk.*

89

(Indorsed:) File No. 25,513, Rhode Island, D. C. U. S. Term No. 683. The United States, plaintiff in error, vs. Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr et al. Filed September 28th, 1916. File No. 25,513.

TRANSCRIPT OF

SUPREME COURT OF THE STATE OF

NEW YORK

THE PEOPLE OF THE STATE OF

NEW YORK

VS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 684.

THE UNITED STATES, PLAINTIFF IN ERROR,

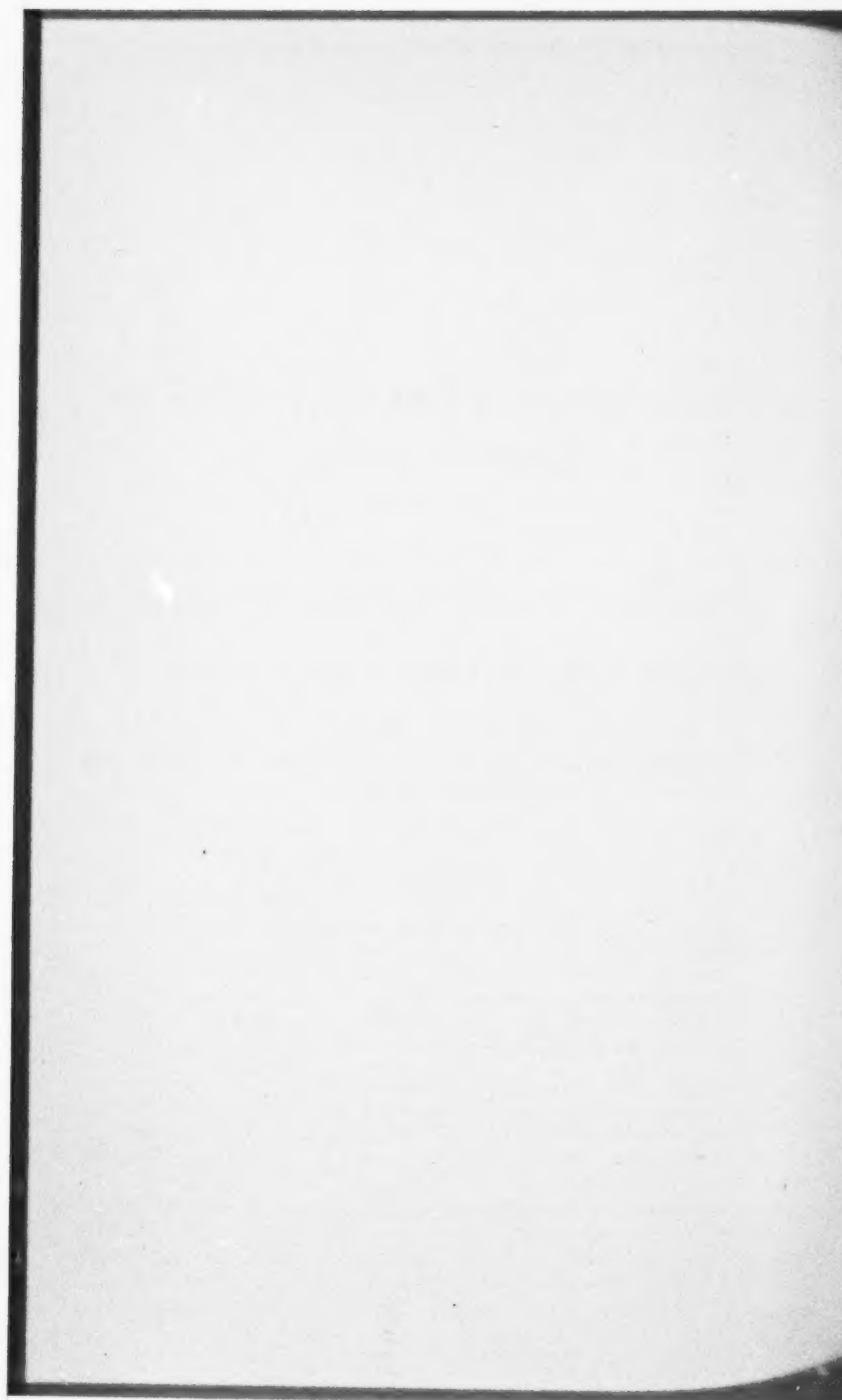
vs.

CHARLES HAMBLY, HENRY C. WILCOX ET AL.

In Error to the District Court of the United States for the District
of Rhode Island.

INDEX.

	Original.	Print.
Writ of error.....	1	1
Clerk's return to writ of error.....	2	1
Indictment.....	3	2
Stipulation reducing record.....	170	90
Demurrer of Charles Hambly.....	172	91
Demurrer of George D. Flynn.....	177	94
Hearing, etc.....	183	97
Opinion on demurrers to indictment No. 114 (Brown, J.).....	184	97
Opinion on demurrers to indictment No. 160 (Brown, J.).....	197	105
Order sustaining demurrers.....	198	106
Petition for writ of error.....	200	107
Order allowing writ of error.....	202	107
Assignment of errors.....	203	108
Precepts for record.....	209	111
Citation and service.....	211	112
Clerk's certificate.....	213	113



1 *Writ of Error. (Issued August 24, 1916.)*

The President of the United States to the honorable the judge of the District Court of the United States, for the First Circuit, District of Rhode Island, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, between the United States of America and Charles Hambly, Henry C. Wilcox, James Moran, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, Peter Clark, and George D. Flynn, a manifest error hath happened, to the great damage of the said United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington, on the twenty-first day of September, A. D. 1916, in the said Supreme Court, that the record and proceedings, aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws
2 and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, this twenty-second day of August, in the year of our Lord, one thousand nine hundred and sixteen.

[SEAL.]

WILLIAM P. CROSS,

Clerk, U. S. District Court, District of Rhode Island.

Allowed by—

ARTHUR L. BROWN,

United States District Judge

for the District of Rhode Island.

Return of District Court on Writ of Error.

DISTRICT COURT OF THE UNITED STATES, } ss:
District of Rhode Island,

And now, here, the Judge of the District Court of the United States, in and for the District of Rhode Island, make return of this writ by annexing hereto and sending herewith under the seal of the said District Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the

same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I William P. Cross, Clerk of said District Court of the United States, in and for the District of Rhode Island, have hereto set my hand and the seal of said court, this 9th day of September, A. D. 1916.

[SEAL.]

WILLIAM P. CROSS, *Clerk*.

3

Transcript of record on appeal.

UNITED STATES OF AMERICA, }
District of Rhode Island, } ss:

At the District Court of the United States begun and holden at Providence within and for the District of Rhode Island, on the 22d day of May, in the year of our Lord 1916. Present: The Honorable Arthur L. Brown, District Judge.

THE UNITED STATES	}	Ind. No. 160.
vs.		
CHARLES HAMBLY AND 18 OTHERS.		

This indictment was found by the grand jury and returned into the clerk's office on the 5th day of May, 1916, and is in the following figures and words:

Indictment.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States in and for the District of Rhode Island, at the November Term thereof, A. D. 1915:

The grand jurors of the United States, impaneled, sworn, and charged, at the term aforesaid, of the court aforesaid, on their oath present, that Charles Hambly (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sammy Stewart, alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River in the Commonwealth of Massachusetts, and divers other persons to the Grand Jurors unknown, hereinafter referred to together as defendants; and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado

4 (alias Stephen Roe), Albert Walmsley (alias Charlie Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe), who are not indicted, by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment, continuously and at all times throughout the period of time from July 1, 1914, to January 1, 1915, at the town of Tiverton, in said District of Rhode Island, and in the first congressional district of Rhode Island and within the jurisdiction of this court, wilfully, unlawfully and feloniously did conspire, combine, confederate and agree together to defraud the United States in the manner and under the circumstances now here set forth; that is to say:

Said defendants were to defraud the United States, as aforesaid, by unlawfully and corruptly prejudicing and hindering the enforcement and administration of certain laws of the State of Rhode Island looking to the conduct of elections in that State, including elections at which Representatives in the Congress of the United States were chosen, in so far as the election, held at Tiverton aforesaid, on said third day of November, 1914, for such Representative was concerned, in that they were to pay to each of a great number, to wit, three hundred, of the voters qualified to vote at said election for a Representative in Congress, a sum of money, usually five dollars, in consideration of his having given his vote, at said election for a candidate for Representative in said Sixty-fourth Congress, to wit, for one Roswell B. Burchard, without reference to whether said Roswell B. Burchard was then the candidate of his choice; said laws of said State of Rhode Island then, throughout said period being, as said defendants each then and there well knew, so framed as to prevent such payment of money to such voters, and the United States than having the right to have said laws enforced and lawfully administered in the premises, and to have each of said voters left to exercise his right to vote for such Representative free from the influence of bribery and corruption.

6 *Overt acts.*

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred

dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to

7 bribe and corrupt voters in said town of Tiverton.

4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn, the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact
8 date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and

did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown; at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made
9 for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambley, at Tiverton on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him, said Budlong, a sum of money, to wit, five dollars (\$5) for his vote, for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambley for the money which Hambley had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambley, at Tiverton on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambley's residence in said town of Tiverton did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

14. That said Patrick Welsh, alias Pat Welch, at Tiverton on, to wit, some time prior to election day, November 3rd, 1914, had
10 printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton on, to wit, said election day, November 3rd, 1914, did watch certain

voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. The said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed, a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5) after said James Moran had signaled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote, if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates, for divers other offices which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did pay to Joseph M. Muniz the sum of five dollars (\$5) which he, said Kearns (alias), on the aforesaid date, had promised to pay said Muniz for his vote if the said Muniz would vote for certain candidates, including Roswell B.

Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he, said Furtado, could arrange that said voters would be paid for their votes, cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket, and told said Richards to give said ticket to Louis Dubois, after he, said Richards, had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you," and on Dunn saying "no," said Welch (alias) then said, "I will make it ten."

23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

12 24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, 1914, the particular day and date being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns) at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards the sum of \$10.00, said sum of \$10.00 being paid to said Richards for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices, which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns) and Samuel F. Stewart (alias Sammy Stewart) and James Moran, at Tiverton, on, to wit, certain days and dates prior to election day, 1914, the particular date and dates being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and names of said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep a record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

13 27. That said Ralph Boardman, at Tiverton, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he, said Constance, would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (said Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a certain date before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out, there is five in it for you, with the intent and purpose to have said Chase cast his vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which said room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices, which were voted for at the same time and place.

34. That said Albert Walmsley, at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and erect voting booths in voting district No. 2, in said town of Tiverton, so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2, in said Tiverton, in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum, to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton, November 3rd, 1914.

38. That said Philip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James W. Pearce a certain sum of money, to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative to Congress and for divers other offices, which were to be voted for at the said
16 election in said town of Tiverton, November 3rd, 1914.

39. That said Philip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton, November 3rd, 1914.

40. That said Philip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the election in said Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the election in said town of Tiverton, November 3rd, 1914.

42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress
and for divers other candidates for divers other offices, which
17 were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors, on their oath aforesaid, do present and say that said defendants aforesaid and the said conspirators aforesaid, at the time and place aforesaid, and in the manner and form aforesaid unlawfully, wilfully, fraudulently, feloniously, and wickedly did conspire, confederate, and agree together to defraud the United States and each did do the several acts aforesaid, to effect the object of said conspiracy, and in furtherance and in execution thereof,

and for the purpose of carrying out the object, design, and agreement aforesaid contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

18

Second count.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States in and for the District of Rhode Island at the November term thereof, A. D. 1915:

The grand jurors of the United States impaneled, sworn, and charged, at the term aforesaid of the court aforesaid, on their oath present that on Tuesday, November 3rd, 1914, an election for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island, of which said first congressional district the town of Tiverton in said State at all times during the year 1914 was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton; George F. O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William E. Brightman, of Tiverton, were candidates for Representative in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambly (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welsh, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sanny Stewart,
19 alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton, in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River, in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to, together as defendants; and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe), who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment, before and in anticipation

of said election of a Representative in Congress for the first congressional district of the State of Rhode Island, to wit, continuously during the year 1914, and particularly on the third day of November, in the year 1914, in the town of Tiverton and the State of Rhode Island, in the first congressional district of Rhode Island and within the jurisdiction of this court, unlawfully, fraudulently, wickedly, and wilfully did conspire, combine, confederate, and agree together to defraud the United States by unlawfully, fraudulently, contemptuously, and wilfully interfering with, disturbing, and altogether frustrating and preventing the free and fair election of a Representative in Congress to be chosen at such election to serve for the said first congressional district of the State of Rhode Island in the then next Congress of the United States, to wit, the Sixty-fourth Congress of the United States, to wit, by influencing a large
20 number of the electors and persons entitled to vote at the said election by bribes, gifts of money, and promises of money, and other corrupt and unlawful rewards, and under such corrupt, fraudulent, and unlawful influence, and by means thereof inducing the said electors and persons entitled as aforesaid to vote at the said election for a Representative in Congress, according to the will, desire, and requirement of them the said defendants and divers other persons then acting and to act in concert and unlawful collusion with them in the premises and as well in the manner aforesaid as by divers other unlawful and corrupt ways, means, methods, and devices, to wit, to the jurors aforesaid as yet unknown, to hinder, frustrate, and prevent the free and fair election of a Representative in Congress for the first congressional district of the State of Rhode Island at the time and place aforesaid, with the intention of fraudulently bringing about the election of a Representative in Congress at the time and place aforesaid by the illegal, fraudulent, and corrupt means aforesaid.

21

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand

jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe
22 and corrupt voters in said town of Tiverton.

4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on
23 some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed

and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton.

ton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed
24 and made for for the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambly, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay his (said Budlong) a sum of money, to wit, five dollars (\$5) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambly for the money which Hambly had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambly, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambly's residence in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

25 14. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton, on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed a large number of white tickets, to wit, three hundred,

which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5) after said James Moran had signalled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (45) for his vote, if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914,
26 the exact date being to the grand jurors unknown, did pay to Joseph M. Muniz the sum of five dollars (\$5), which he, said Kearns (alias), on the aforesaid date, had promised to pay said Muniz for his vote if the said Muniz would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he, said Furtado, could arrange that said voters would be paid for their votes cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket and told said Richards to give said ticket to Louis Dubois after he, said Richards, had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you," and on Dunn saying "No," said Welsh (alias) then said, "I will make it ten."

27 23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, 1914, the particular day and date to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified

voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards the sum of \$10.00, said sum of \$10.00 being paid to said Richards for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices.

26. That said John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), and James Moran, at Tiverton, on, to wit, certain days and dates prior to election day, November 3rd, 1914, the particular date and dates being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and names of said voters being to the grand jurors unknown,

28 to write their names in a certain book, which book was then and there used to keep a record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a certain date before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out, there is five in it for you," with the intent and purpose to have said Chase cast his vote for cer-

tain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain day after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel in which said room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices which were voted for at the same time and place.

30 34. That said Albert Walmsley, at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and erect voting booths in voting district No. 2 in said town of Tiverton, so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2 in said Tiverton in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum, to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he, said Howarth, would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election, in
31 Tiverton, November 3rd, 1914.

38. That said Philip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James W. Pearce, a certain sum of money, to wit, \$5.00 if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton November 3rd, 1914.

39. That said Philip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress at said election in Tiverton November 3rd, 1914.

40. That said Philip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00 if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer
32 and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton November 3rd, 1914.

42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton November 3rd, 1914.

33 And so the grand jurors, on their oath aforesaid, do present and say that said defendants aforesaid and the said co-conspirators aforesaid, at the time and place aforesaid, and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid, to effect the object of said conspiracy, and in furtherance and in execution thereof, and for the purpose of carrying out the object, design, and agreement aforesaid contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States in and for the District of Rhode Island, at the November term thereof, A. D. 1915:

The grand jurors of the United States impaneled, sworn, and charged, at the term aforesaid, of the court aforesaid, on their oath present, that on Tuesday, November 3rd, 1914, an election day for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island, of which said first congressional district, the town of Tiverton in said State at all times during the year 1914 was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton; George F. O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William E. Brightman, of Tiverton, were candidates for Representative in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis
 35 Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sammy Stewart, alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip McComber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton, in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River, in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants; and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe), who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment, before and in anticipation of said election, unlawfully, fraudulently, wickedly, and wilfully, devising, and intending by corrupt, fraudulent, and unlawful means to assist in procuring the election and return of the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, at the election aforesaid, to serve as a Representative in

Congress for the first congressional district in the then next Congress of the United States, to wit, the Sixty-fourth Congress of the United States, and so fraudulently assist in procuring for the said Roswell B. Burchard aforesaid the annual statutory salary of seventy-five hundred dollars (\$7,500) per annum provided for
36 Representative in Congress, continuously during the year 1914 and particularly on the third day of November in the year of our Lord 1914 in the said town of Tiverton in the State of Rhode Island, in said first congressional district and within the jurisdiction of this court unlawfully, fraudulently, and wickedly did conspire, combine, confederate, and agree together to defraud the United States by secretly accumulating and causing to be accumulated and by assisting one another in accumulating and causing to be accumulated divers large sums of money, to wit, at Tiverton aforesaid, for the purpose therewith of bribing and corrupting voters and persons entitled to vote at the said election for a Representative in Congress, and before and during said election unlawfully and fraudulently by making and causing to be made payment and gifts of, from, and out of the said money to such voters for and on account of their having voted for Roswell B. Burchard, of Little Compton, and so by the means aforesaid and with the intent and purpose aforesaid, the said defendants did conspire, combine, confederate, and agree together to defraud the United States.

37

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton, to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of five hundred dollars (\$500), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and

there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

38 4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at
39 which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions rela-
40 tive to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambly, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambly for the money which Hambly had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambly, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambly's residence in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

41 14. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5) after said James Moran had signalled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the

exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote, if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914,
42 the exact date being to the grand jurors unknown, did pay to Joseph M. Muniz the sum of five dollars (\$5) which he (said Kearns, alias) on the aforesaid date, had promised to pay said Muniz for his vote if the said Muniz would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he (said Furtado) could arrange that said voters would be paid for their votes cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket and told said Richards to give said ticket to Louis Dubois after he (said Richards) had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you," and on Dunn saying "No,"
43 said Welsh (alias), then said, "I will make it ten."

23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, 1914, the particular day and date being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards the sum of \$10.00, said sum of \$10.00 being paid to said Richards for his vote at the election November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns) and Samuel F. Stewart (alias Sammy Stewart) and James Moran, at Tiverton, on, to wit, certain dates and dates prior to election day, 1914, the particular days and dates being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and
44 names of of said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there to keep a record of the voters in the town of Tiverton who were to be paid for their votes at the election November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (said Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a
45 certain date before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out, there is five in it for you," with the intent and purpose to have said Chase cast his vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kearns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which said room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices which were voted for at the same time and place.

34. That said Albert Walmsley, at Tiverton, on, to wit, some 46 time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and erect voting booths in voting district No. 2, in said town of Tiverton, so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2, in said Tiverton, in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at said election in said town of Tiverton November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum, to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton November 3rd, 1914.

47 38. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James W. Pearce a certain sum of money, to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton November 3rd, 1914.

39. That said Phillip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton, November 3rd, 1914.

40. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton November 3rd, 1914.

48 42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton November 3rd, 1914.

And so the grand jurors, on their oath aforesaid, do present and say that said defendants aforesaid, and the said co-conspirators aforesaid, at the time and place aforesaid, and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid to effect the object of said conspiracy, and in furtherance and in execution thereof, and for the purpose of carrying out the object, design, and agreement aforesaid contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States in and for the District of Rhode Island, at the November term thereof, A. D. 1915:

The grand jurors of the United States impaneled, sworn, and charged, at the term aforesaid, of the court aforesaid, on their oath present, that on Tuesday, November 3rd, 1914, an election for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island, of which said first congressional district, the town of Tiverton, in said State, at all times during the year 1914 was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton; George F. O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William E. Brightman, of Tiverton, were candidates for Representative in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kearns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Steward (alias Sammy Steward, alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River, in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants, and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe) (who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment), unlawfully, fraudulently, wickedly, and wilfully devising and intending by corrupt, fraudulent, and unlawful means to procure the election and return of the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, at the election aforesaid, to serve as a Representative in Congress for the first congressional district of the State of Rhode Island in the then next Congress of the United

States, to wit, the Sixty-fourth Congress of the United States, and so fraudulently procure for the said Roswell B. Burchard, of Little Compton, aforesaid, the annual statutory salary of seventy-five hundred dollars (\$7,500.00) per annum provided for a Representative in Congress, continuously and at all times during the year 1914, and particularly on the third day of November in the year 1914, in the said town of Tiverton in the State of Rhode Island and within the jurisdiction of this court, unlawfully, fraudulently, wickedly,

51 and wilfully did conspire, combine, confederate, and agree together unlawfully, fraudulently, wickedly, and wilfully, by gifts and rewards, and by sums of money and by promises of sums of money, to bribe, corrupt, and procure divers persons whose names are to the grand jurors unknown then being entitled to vote at said election for said first representative district for a Representative in Congress to give their votes, respectively, at said election for the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, and divers persons whose names are to the grand jurors unknown then being entitled to vote at said election for said first representative district for a Representative in Congress to forbear to give their votes at said election for George F. O'Shaunessy, of Providence, Benjamin F. Lindemuth, of Bristol, John W. Higgins, of Providence, and William E. Brightman, of Tiverton, so being such candidates as aforesaid, and so by the names aforesaid and with the intent and purpose aforesaid, they, the said defendants, did conspire, combine, confederate, and agree together to defraud the United States.

52

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand



Microcard Editions

An Indian Head Company

A Division of Information Handling Services

CARD 2

jurors unknown, did demand from John Simpson, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

53 4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

54 8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and
55 made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambley, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambley for the money which Hambley had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambley, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambley's residence in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote, which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

14. That said Patrick Welsh (alias Pat Welch), at Tiverton,
56 on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed, a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5) after said James Moran had signaled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, promised one Joseph

M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote, if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, did pay
57 to Joseph M. Muniz the sum of *of* five dollars (\$5) which he (said Kearns, alias), on the aforesaid date, had promised to pay said Muniz for his vote if the said Muniz would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he (said Furtado) could arrange that said voters would be paid for their votes, cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket and told said Richards to give said ticket to Louis Dubois after he (said Richards) had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you"; and on Dunn saying "No," said Welsh (alias) then said, "I will make it ten."

58 23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, A. D. 1914, the particular day and date being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart alias, and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914,

the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards the sum of \$10.00, said sum of \$10.00 being paid to said Richards for his vote at the election November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns) and Samuel F. Stewart (alias Sammy Stewart) and James Moran, at Tiverton, on, to wit, certain days and dates prior to election day, 1914, the particular date and dates being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and names of
59 said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep a record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a certain
60 date before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out, there is five in it for you," with the intent and purpose to have said Chase cast his vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the

particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which said room payment was made to voters, who had voted for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates, for divers other offices which were voted for at the same time and place.

61 34. That said Albert Walmsley, at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did contract and erect voting booths in voting district No. 2 in said town of Tiverton, so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2 in said Tiverton, in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum, to wit, \$5.00, which he (said Kearns, alias), had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton, November 3rd, 1914.

62 38. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James W.

Pearce, a certain sum of money, to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted at the said election in said town of Tiverton, November 3rd, 1914.

39. That said Philip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton, November 3rd, 1914.

40. That said Philip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer
63 and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors on their oath aforesaid do present and say that said defendants aforesaid and the said coconspirators aforesaid, at the time and place aforesaid, and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly did conspire, confederate and agree together to defraud the United States, and each did do the several acts aforesaid, to effect the object of said conspiracy, and in furtherance and in execution thereof, and for the purpose of carrying out the object, design, and agreement aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, 88:

In the District Court of the United States in and for the District of Rhode Island, at the November term thereof, A. D. 1915:

The grand jurors of the United States impaneled, sworn, and charged, at the term aforesaid of the court aforesaid, on their oath present that on Tuesday, November 3rd, 1914, an election for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island, of which said first congressional district, the town of Tiverton in said State at all times during the year 1914 was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton; George F. O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William E. Brightman, of Tiverton, were candidates for Representative in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sammy Stewart, alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants; and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe) (who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment), unlawfully, fraudulently, wickedly, and wilfully devising and intending by corrupt, fraudulent, and unlawful means to procure the election and return of the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, at the election aforesaid, to serve as a Representative in Congress for the first congressional district of the State of Rhode Island in the then next Congress of the United States, to wit, the Sixty-fourth

Congress of the United States, and so fraudulently procure for the said Roswell B. Burchard, of Little Compton aforesaid, the annual statutory salary of seventy-five hundred dollars (\$7,500.00) per annum provided for a Representative in Congress continuously and at all

66 times during the year 1914 and particularly on the third day of November, in the year 1914, in the said town of Tiverton in the State of Rhode Island, and within the jurisdiction of this court, unlawfully, fraudulently, wickedly, and wilfully did conspire, combine, confederate, and agree together unlawfully, fraudulently, wickedly, and wilfully by gifts and rewards and by sums of money and by promises and agreements for gifts and rewards and by promises of sums of money to bribe, corrupt, and procure divers persons entitled to vote at the said election for a Representative in Congress for the said first representative district of the State of Rhode Island to give their votes respectively at the said election for the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, and to forbear to give their votes at the said election for George F. O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; or William E. Brightman, of Tiverton; so being such candidates as aforesaid, and so by the means aforesaid and with the intent and purpose aforesaid, they, the said defendants, did conspire, combine, confederate, and agree together to defraud the United States.

67

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn, the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and

there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

68 4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn, the sum of four hundred dollars (\$400) which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

69 8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and
70 made for the bribing of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambley, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambley for the money which Hambley had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambley, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambley's residence in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

14. That said Patrick Welsh (alias Pat Welch), at
71 Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed, a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5) after said James Moran had signaled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, A. D.

1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote, if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates, for divers other offices which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, did pay to Joseph M. Muniz the sum of five dollars (\$5), which he (said Kearns, alias), on the aforesaid date, had promised to pay said Muniz for his vote if the said Muniz would vote for certain candidates including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he (said Furtado) could arrange that said voters would be paid for their votes, cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket, and told said Richards to give said ticket to Louis Dubois, after he, said Richards, had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, A. D. 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of

Tiverton, "There is five in it for you," and on Dunn saying

73 "No," said Welsh (alias) then said, "I will make it ten."

23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, A. D. 1914, the particular day and date being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards the sum of \$10.00, said sum of \$10.00 being paid to said Richards for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns) and Samuel F. Stewart (alias Sammy Stewart) and James Moran, at Tiverton, on, to wit, certain days and dates prior to election day, 1914, the particular date and dates being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain
qualified voters in said town of Tiverton, the number and
74 names of said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep a record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? These fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a
75 certain date before election day, November 3rd, the particular date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out there is five in it for you," with the intent and purpose to have said Chase cast his vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which said room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices, which were voted for at the same time and place.

76 34. That said Albert Walmsley, at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did contract and erect voting booths in voting district No. 2 in said town of Tiverton, so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2 in said Tiverton in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum, to wit, \$5.00, which he said Kearns (alias) had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election,
77 in Tiverton, November 3rd, 1914.

38. That said Philip Macomber, at Tiverton, on, to wit, election November 3rd, 1914, did offer and promise to pay to James W. Pearce a certain sum of money, to wit, \$5.00 if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

39. That said Philip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce, a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election, in Tiverton, November 3rd, 1914.

40. That said Philip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress, and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer
78 and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors on their oath aforesaid do present and say that said defendants aforesaid and the said coconspirators aforesaid at the time and place aforesaid and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly did conspire, confederate, and agree together to defraud the United States, and each did so the several acts aforesaid to effect the object of said conspiracy and in furtherance and in execution thereof and for the purpose of carrying out the object, design, and agreement aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,

United States Attorney.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States in and for the District of Rhode Island, at the November term thereof, A. D. 1915:

The grand jurors of the United States impaneled, sworn, and charged, at the term aforesaid, of the court aforesaid, on their oath present, that on Tuesday, November 3rd, 1914, an election for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island, of which said first congressional district, the town of Tiverton in said State at all times during the year 1914 was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton; George F. O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William E. Brightman, of Tiverton, were candidates for Representative in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sammy Stewart, alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Doe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark, (alias William Roe), of the town of Tiverton in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants; and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe) (who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment), unlawfully, fraudulently, wickedly, and wilfully devising and intending by corrupt, fraudulent, and unlawful means to procure the election and return of the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, at the election aforesaid, to serve as a Representative in Congress for the first congressional district of the State

of Rhode Island in the then next Congress of the United States, to wit, the Sixty-fourth Congress of the United States, and so fraudulently procure for the said Roswell B. Burchard, of Little Compton, aforesaid, the annual statutory salary of seventy-five hundred dollars (\$7,500.00) per annum provided for a Representative in Congress during the year 1914, and particularly on the third day of November, in the year 1914, in the said town of Tiverton, in the State
81 of Rhode Island, and within the jurisdiction of this court, unlawfully, fraudulently, wickedly, and wilfully did conspire, combine, confederate, and agree together unlawfully, fraudulently, wickedly, and wilfully to hinder and prevent a Representative in Congress for the first representative district of the State of Rhode Island, being freely and lawfully elected to represent said first representative district in the then next Congress of the United States, to wit, the Sixty-fourth Congress of the United States, by bribing and offering and attempting to bribe a large number of the persons in the town of Tiverton entitled to vote for a Representative in Congress in said election of a Representative in Congress for said first congressional district for the State of Rhode Island, and so by the means aforesaid and with the intent and purpose aforesaid, they, the said defendants, did conspire, confederate, and agree together to defraud the United States.

82

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400) which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn, the sum of four hundred dollars (\$400) which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and

there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to

83 bribe and corrupt voters in said town of Tiverton.

4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn, the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on

84 some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown; at which time plans and arrangements were discussed and
85 made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambly, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambly for the money which Hambly had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambly, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambly's residence in said town of Tiverton did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

86 14. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said Hames Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton, on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed, a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5) after said James Moran had signalled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, A. D.

1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, A. D. 87 1914, the exact date being to the grand jurors unknown, did pay to Joseph M. Muniz the sum of five dollars (\$5), which he (said Kearns, alias), on the aforesaid date, had promised to pay said Muniz for his vote if the said Muniz would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he (said Furtado) could arrange that said voters would be paid for their votes cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket, and told said Richards to give said ticket to Louis Dubois after he (said Richards) had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, A. D. 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you," and on Dunn saying "No," 88 said Welch, alias, then said, "I will make it ten."

23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, A. D. 1914, the particular date and day being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914,

the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards the sum of \$10.00, said sum of \$10.00 being paid to said Richards for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices, which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), and James Moran, at Tiverton, on, to wit, certain date and dates prior to election day, November 3rd, 1914, the particular days and dates being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart,

89 procured certain qualified voters in said town of Tiverton, the number and names of said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep a record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (said Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a
90 certain date before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out there is five in it for you," with the intent and purpose to have said Chase cast his vote for certain candidates including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the

particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which said room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates, for divers other offices which were voted for at the same time and place.

91 34. That said Albert Walmsley, on, to wit, some time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and erect voting booths in voting district No. 2 in said town of Tiverton, so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did construct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2 in said Tiverton, in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00 if he (said Howarth) would vote for Roswell B. Burchard, for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he, said Howarth, would vote for certain candidates including Roswell B. Burchard, candidate for Representative in Congress, at said election, in Tiverton, November 3rd, 1914.

92 38. That said Philip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay

to James W. Pearce, a certain sum of money to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

39. That said Philip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he, said Macomber had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election, in Tiverton, November 3rd, 1914.

40. That said Philip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B.

Burchard for Representative in Congress and for divers
93 other candidates for divers other offices, which were to be
voted for at the said election in said town of Tiverton, November 3rd, 1914.

42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors on their oath aforesaid do present and say that said defendants aforesaid and the said co-conspirators aforesaid, at the time and place aforesaid, and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid, to effect the object of said conspiracy, and in furtherance and in execution thereof, and for the purpose of carrying out the object, design, and agreement aforesaid contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, 88:

In the District Court of the United States in and for the District of Rhode Island, at the November term thereof, A. D. 1915:

The grand jurors of the United States impeaneled, sworn, and charged, at the term aforesaid, of the court aforesaid, on their oath present, that on Tuesday, November 3rd, 1914, an election for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island, of which said first congressional district, the town of Tiverton in said State at all times during the year 1914 was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton; George F. O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William E. Brightman, of Tiverton, were candidates for Representative in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sammy Stewart alias
95 Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants, and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe), who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment, unlawfully, fraudulently, and wilfully devising by corrupt, fraudulent, and unlawful means to procure the election and return of the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, at the election aforesaid, to serve as a Representative in Congress, and so fraudulently procure for the said Roswell B. Burchard, of Little Compton aforesaid, the annual statutory salary of seventy-five hun-

dred dollars (\$7,500.00) provided for Representative in Congress, continuously and at all times during the year 1915 and particularly on the third day of November, in the year of our Lord 1915, in said town of Tiverton, in the State of Rhode Island, and within the jurisdiction of this court, unlawfully, fraudulently, wickedly, and wilfully did conspire, combine, confederate, and agree together unlawfully, fraudulently, wickedly, and wilfully by gifts and rewards and
 96 by sums of money and by promises and agreements of gifts and rewards and by promises of sums of money to bribe, corrupt, and procure divers persons entitled to vote at the said election of a Representative in Congress for the said first congressional district of the State of Rhode Island, to give their votes respectively at the said election for the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, and so by the means aforesaid and with the intent and purpose aforesaid, they, the said defendants, did conspire, combine, confederate, and agree together to defraud the United States.

97

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe
 98 and corrupt voters in said town of Tiverton.

4. That said John Simpson on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the

grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George D. Lawton did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact date
99 and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambly, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact
100 date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribing of voters, and did join in giving instructions relative to the bribery of voters and the purchase of

votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambley, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5.00) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambley for the money which Hambley had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambley, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambley's residence, in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

101 14. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton, on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one of receive the sum of five dollars (\$5.00) after said James Moran had signalled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did pay to 102 Joseph M. Muniz the sum of five dollars (\$5), which he (said Kearns, alias), on the aforesaid date, had promised to pay said Muniz for his vote if the said Muniz would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he (said Furtado) could arrange that said voters would be paid for their votes cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket, and told said Richards to give said ticket to Louis Dubois after he (said Richards) had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you," and on Dunn saying "No," said Welsh (alias) then said, "I will make it ten."

103 23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, 1914, the particular date and date being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart, alias, and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards, for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices, which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), and James Moran, at Tiverton, on, to wit, a certain dates and days prior to election day, 1914, the particular days and places being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and names of said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep
104 a record of the voters in the town of Tiverton who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance), would vote for Roswell B. Burchard for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (said Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a certain date before election day, November 3rd, 1914, the particular date being to the grand jurors unknown did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out there is five in it for you," with the intent and purpose to have said Chase cast his vote for certain
105 candidates including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert

Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which said room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices which were voted for at the same time and place.

34. That said Albert Walmsley, at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and
106 erect voting booths in voting district No. 2, in said town of Tiverton, so that any person standing a few feet to the left of the voter marking his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2, in said Tiverton, in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum of money, to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election, in Tiverton, November 3rd, 1914.

38. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to
107 James W. Pearce a certain sum of money, to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

39. That said Phillip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candi-

dates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton, November 3rd, 1914.

40. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00 if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00 if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

42. That said Herbert L. Barker, at Tiverton, on, to wit, 108 election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors on their oath aforesaid do present and say that said defendants aforesaid and the coconspirators aforesaid at the time and place aforesaid and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly, did conspire, confederate, and agree together to defraud the United States and each did do the several acts, aforesaid, to effect the object of said conspiracy and in furtherance and in execution thereof and for the purpose of carrying out the object, design, and agreement aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

109

Eighth count.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States in and for the district of Rhode Island at the November term thereof, A. D. 1915:

The grand jurors of the United States impaneled, sworn, and charged, at the term aforesaid, of the court aforesaid, on their oath present, that on Tuesday, November 3rd, 1914, an election for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island, of which said first

congressional district, the town of Tiverton in said State, at all times during the year 1914 was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton, George F. O'Shaunessy, of Providence, Benjamin F. Lindemuth, of Bristol, John W. Higgins, of Providence, and William E. Brightman, of Tiverton, were candidates for Representative in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St.
 110 Laurent (alias David Doe), Samuel F. Stewart (alias Sammy Stewart, alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton, in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River, in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants, and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe), who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment, and divers other persons, to wit, to the grand jurors aforesaid as yet unknown, unlawfully, fraudulently, wickedly, and wilfully devising and intending by corrupt, fraudulent, and unlawful means to procure the election and return of the said Roswell B. Burchard of Little Compton, so being such candidate as aforesaid at the election aforesaid, to serve as a Representative in Congress for the first congressional district of the State of Rhode Island, in the then next Congress of the United States, and so procure for the said Roswell B. Burchard the annual statutory salary of seventy-five hundred dollars (\$7,500) per annum provided for a Representative in Congress, in anticipation of said election and after the making, passing, and coming into operation
 of a certain law of the State of Rhode Island made and passed
 111 at the January session of the Legislature of the State of Rhode Island in the year 1907, being section 3, chapter 20 of the General Law of the State of Rhode Island, 1909, which said law at the time of the making and formation of said conspiracy, and continuously and at all times from 1907 to the date of the finding of this indictment, had been in full force and effect in the State of Rhode Island, which said law is as follows:

"SEC. 3. Every person who shall directly or indirectly offer or agree to give to any elector or to any person for the benefit of any elector any sum of money or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote at any election in this State, or by way of reward for having voted or withheld his vote, or who shall use any threat or employ any means of intimidation for the purpose of influencing such elector to vote or withhold his vote for or against any candidate or candidates or proposition pending at such election, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment of not less than six months nor more than two years, or by both such fine and imprisonment in the discretion of the court, and no person after conviction of such offence shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office; and no evidence given by any witness testifying upon the trial of any charge of bribery shall be used against the person giving such evidence."

To wit, continuously and at all times during the year 1914, and particularly on the third day of November, A. D. 1914, in the town of Tiverton aforesaid and within the jurisdiction of this court, unlawfully, fraudulently, wickedly, and wilfully did conspire, combine, confederate, and agree together, to ascertain and discover voters and persons entitled to vote for a Representative in Congress at said election who should be willing to receive bribes and give their votes

112 for a Representative in Congress and to refrain from voting for a Representative at said election according to the will, dictation, direction, and requirement of them the said defendants and the said persons to the grand jurors unknown, or some or one of them, and after and during said election contrary to the laws of the State of Rhode Island aforesaid in that behalf unlawfully and wilfully to make and cause to be made and to assist one another in making and causing to be made payment and gifts of money to such voters for and on account of their having voted for or refrained from voting for a Representative in Congress at said election, and so in the manner aforesaid to bribe voters at, after, and in reference to said election of a Representative in Congress, contrary to the laws of the State of Rhode Island made and provided for the protection of elections of Representatives in Congress, and so by the means aforesaid and with the intent and purpose aforesaid they, the said defendants, did conspire, combine, confederate, and agree together to defraud the United States.

113

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully

did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn, the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were

discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors
116 unknown, at which time plans and arrangements were discussed and made for the bribing of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambley, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambley for the money which Hambley had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambley, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambley's residence in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would

vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

117 14. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton, on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5.00) after said James Moran had signalled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the same time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, A. D. 118 1914, the exact date being to the grand jurors unknown, did pay to Joseph M. Muniz the sum of five dollars (\$5) which he (said Muniz, alias), on the aforesaid date, had promised to pay said Muniz for his vote if he (said Muniz) would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he (said Furtado) could arrange that said voters would be paid for their votes cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket, and told said Richards to give said ticket to Louis Dubois after he (said Richards) had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being

to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you," and on Dunn saying "No," said Welsh (alias) then said, "I will make it ten."

119 23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, 1914, the particular day and date being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 2nd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards, for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices, which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), and James Moran, at Tiverton, on, to wit, certain dates and days prior to election day, 1914, the particular days and places being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and names of said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep a
120 record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of

money being to the grand jurors unknown, if he (said Constance), would vote for Roswell B. Burchard for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (said Chase), would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a certain date before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out, there is five in it for you, with the intent and purpose to have said Chase cast his vote for certain candidates
121 including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel in which said room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices, which were voted for at the same time and place.

34. That said Albert Walmsley, at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and erect voting booths in voting district No. 2 in said town of Tiverton, so that any person standing a few feet to the left of the
122 voter making his ballot in said booths, could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert

Walmsley to construct and erect the voting booths in voting district No. 2 in said Tiverton in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum, to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress at said election in Tiverton, November 3rd, 1914.

38. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James W. Pearce a certain sum of money, to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative in
123 Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

39. That said Phillip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election, in Tiverton, November 3rd, 1914.

40. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to
124 Irving A. Brown a certain sum of money to wit, \$5.00, if he

(said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors on their oath aforesaid do present and say that said defendants aforesaid and the coconspirators aforesaid at the time and place aforesaid and in the manner and form aforesaid unlawfully, wilfully, fraudulently, feloniously, and wickedly did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid to effect the object of said conspiracy, and in furtherance and in execution thereof and for the purpose of carrying out the object, design, and agreement aforesaid contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

125

Ninth count.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States in and for the District of Rhode Island, at the November term thereof, A. D. 1915:

The grand jurors of the United States impaneled, sworn, and charged, at the term aforesaid, of the court aforesaid, on their oath present, that on Tuesday, November 3rd, 1914, an election for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island of which said first congressional district the town of Tiverton, in said State, at all times during the year 1914, was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton, George F. O'Shaunessy, of Providence, Benjamin F. Lindemuth, of Bristol, John W. Higgins, of Providence, and William E. Brightman, of Tiverton, were candidates for Representatives in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sammy Stewart,
126 alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias

Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River, in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants, and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albery Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson, (alias Alexander Doe), who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment, unlawfully, fraudulently, and wilfully devising by corrupt, fraudulent, and unlawful means to procure the election and return of the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, at the election aforesaid to serve as a Representative in Congress and so fraudulently procure for the said Roswell B. Burchard, of Little Compton aforesaid, the annual statutory salary of seventy-five hundred dollars (\$7,500) provided for a Representative in Congress, continuously and at all times during the year 1914, and particularly on the third day of November, in the year of our Lord 1914, in said town of Tiverton, in the State of Rhode Island, and within the jurisdiction of this court, unlawfully, fraudulently, wickedly, and wilfully, did conspire, combine, confederate, and agree together unlawfully, fraudulently, wickedly, and wilfully by gifts and rewards and

127 by sums of money and by promises and agreements of gifts and rewards and by promises of sums of money to bribe, corrupt, and procure a large number of persons entitled to vote in the town of Tiverton in said first representative district of the State of Rhode Island for a Representative in Congress for said first representative district of the State of Rhode Island, to give their votes respectively at the said election for the said election for the said Roswell B. O'Shaunnessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William E. Brightman, of Tiverton, so being such candidates as aforesaid and so by the means aforesaid, and with the intent and purpose aforesaid, said defendants did conspire, combine, confederate, and agree together to defraud the United States.

128

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand

jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton
129 to bribe and corrupt voters in said town of Tiverton.

4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on
130 some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact

date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand
131 jurors unknown, at which time plans and arrangements were discussed and made for the bribing of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambley, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5.00) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambley for the money which Hambley had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambley, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambley's residence in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

132 14. That said Partick Welsh (alias Pat Welch), at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they

entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton, on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5.00) after said James Moran had signalled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the same time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, did pay to Joseph M. Muniz the sum of five dollars (\$5), which he (said Muniz, alias), on the aforesaid date, had promised to pay said Muniz for his vote if he (said Muniz) would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he (said Furtado) could arrange that said voters would be paid for their votes cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket, and told said Richards to give said ticket to Louis Dubois after he (said Richards) had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the voters he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiver-

ton, "There is five in it for you," and on Dunn saying "No," said Welsh (alias) then said, "I will make it ten."

134 23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, 1914, the particular day and date being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices, which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), and James Moran, at Tiverton, on, to wit, certain dates and days prior to election day, 1914, the particular days and places being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and names of said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep a
135 record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance) would vote for Roswell B. Burchard, for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (said Chase) would vote a certain way, to wit, for Roswell B.

Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a certain date before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out there is five in it for you, with the intent and purpose to have said Chase cast his vote for certain candi-
136 dates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay to Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which said room payment was made to voters, who had voted for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices which were voted for at the same time and place.

34. That said Albert Walmsley, at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and erect voting booths in voting district No. 2 in said town of Tiver-
137 ton, so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2 in said Tiverton in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if

he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum, to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election, in Tiverton, November 3rd, 1914.

38. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James W. Pearce a certain sum of money, to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

39. That said Phillip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election, in Tiverton, November 3rd, 1914.

40. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors, on their oath aforesaid, do present and say that said defendants aforesaid and the coconspirators aforesaid

at the time and place aforesaid and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly, did conspire, confederate, and agree together to defraud the United States, and each did do the several acts, aforesaid, to effect the object of said conspiracy, and in furtherance and in execution thereof and for the purpose of carrying out the object, design, and agreement aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

140

Tenth count.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States in and for the district of Rhode Island at the November term thereof, A. D. 1915:

The grand jurors of the United States impaneled, sworn, and charged, at the term aforesaid, of the court aforesaid, on their oath present, that on Tuesday, November 3rd, 1914, an election for a Representative in Congress for the first congressional district of the State of Rhode Island was held according to law in said first congressional district of the State of Rhode Island, of which said first congressional district, the town of Tiverton in said State at all times during the year 1914 was a part, and that at said election for a Representative in Congress Roswell B. Burchard, of Little Compton; George F. O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William E. Brightman, of Tiverton, were candidates for Representative in the Sixty-fourth Congress of the United States for the first congressional district of the State of Rhode Island.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sammy Stewart),
141 alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Boardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton, in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River, in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants; and Thomas Beardsworth (alias Stephen

Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe), who are not indicted by reason of their having appeared before the grand jury and testified relative to the matters set out in this indictment, unlawfully, fraudulently, and wilfully devising by corrupt, fraudulent, and unlawful means to procure the election and return of the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, at the election aforesaid to serve as a Representative in Congress and so fraudulently procure for the said Roswell B. Burchard, of Little Compton aforesaid, the annual statutory salary of seventy-five hundred dollars (\$7,500) provided for a Representative in Congress, continuously and at all times during the year 1914, and particularly on the third day of November, in the year of our Lord 1914, in said town of Tiverton, in the State of Rhode Island, and within the jurisdiction of this court, unlawfully, fraudulently, wickedly, and wilfully did conspire, combine, confederate, and agree together unlawfully, fraudulently, wickedly, and wilfully by gifts and rewards and by sums of 142 money and by promises and agreements of gifts and rewards and by promises of sums of money, to bribe, corrupt, and procure divers persons, to wit: Lester W. Chase, Robert Bagshaw, Alexander Howarth, James W. Pearce, Andrew J. Judd, James M. Manchester, Irving A. Brown, Charles E. Budlong, Joseph M. Muniz, Fred C. Richards, Thomas F. Dunn, John M. Constance, and divers other persons whose names are to the grand jurors unknown, entitled to vote at the said election of a Representative in Congress for the said first representative district of the State of Rhode Island, to give their votes respectively at the said election for the said election for the said Roswell B. Burchard, of Little Compton, so being such candidate as aforesaid, and to forbear to give their votes at said election for George O'Shaunessy, of Providence; Benjamin F. Lindemuth, of Bristol; John W. Higgins, of Providence; and William F. Brightman, of Tiverton, so being such candidates as aforesaid, and so by the means aforesaid and with the intent and purpose aforesaid, they, the said defendants, did conspire, combine, confederate, and agree together to defraud the United States.

143

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf, hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then

and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton, to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred
144 dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton, to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914,
145 the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the

exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel, in the town of Tiverton, on some date prior to election day, November 3rd, 1914, 146 the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambley, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5.00) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambley for the money which Hambley had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambley, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambley's residence, in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

147 14. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton, on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed a large number of white tickets, to wit, three hundred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5.00) after said James Moran had signalled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote, if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates, for divers other offices which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, A. D. 148 1914, the exact date being to the grand jurors unknown, did pay to Joseph M. Muniz the sum of five dollars (\$5), which he (said Kearns, alias), on the aforesaid date, had promised to pay said Muniz for his vote if he (said Muniz) would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters so that he (said Furtado) could arrange that said voters would be paid for their votes cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred W. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket, and told said Richards to give said ticket to Louis Dubois, after he, said Richards, had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker, to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you," and on Dunn saying, "No," 149 said Welsh (alias) then said, "I will make it ten."

23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, 1914, the particular day and date being to the grand jurors unknown, talked with Fred M. Richards, who was then and there a qualified voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards the sum of \$10.00, said sum of \$10.00 being paid to said Richards for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns) and Samuel F. Stewart (alias Sammy Stewart) and James Moran, at Tiverton, on, to wit, certain dates and days prior to election day, 1914, the particular days and places being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and
150 names of said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep a record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then

and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (said Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a certain date before election day, November 3rd, 1914, the particular
151 date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, "If you will help us out there is five in it for you," with the intent and purpose to have said Chase cast his vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices, which were voted for at the same time and place.

34. That said Albert Walmsley, at Tiverton, on, to wit, some
152 time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and erect voting booths in voting district No. 2 in said town of Tiverton so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2 in said Tiverton in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to

pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to Alexander Howarth a certain sum, to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton, November 3rd, 1914.

38. That said Phillip Macomber, at Tiverton, on, ———
153 promise to pay to James W. Pearce a certain sum of money, to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

39. That said Phillip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election, at Tiverton, November 3rd, 1914.

40. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress, and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

154 42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors on their oath aforesaid do present and say that said defendants aforesaid and the coconspirators aforesaid

at the time and place aforesaid, and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly, did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid, to effect the object of said conspiracy and in furtherance and in execution thereof and for the purpose of carrying out the object, design, and agreement aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

155

Eleventh count.

Of the November term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

In the District Court of the United States, in and for the district of Rhode Island, at the November term thereof, A. D. 1915.

The grand jurors of the United States, impaneled, sworn, and charged at the term aforesaid, on their oath present, that Charles Hambley (alias John Doe), Henry C. Wilcox (alias James Doe), James Moran (alias Thomas Doe), Patrick Welch (alias Pat Welch, alias Joseph Doe), Louis Dubois (alias Henry Doe), John Kearns (alias John Kerns, alias Richard Doe), George R. Lawton (alias William Doe), Zenon St. Laurent (alias David Doe), Samuel S. Stewart (alias Sammy Stewart, alias Isaac Doe), George W. Potter (alias Peter Roe), Herbert L. Barker (alias Samuel Doe), Phillip Macomber (alias John Roe), Thomas Sisson (alias James Roe), Ralph Beardman (alias Thomas Roe), John Cain (alias Joseph Roe), John Peacock (alias Henry Roe), William C. Wood (alias Richard Roe), and Peter Clark (alias William Roe), of the town of Tiverton in the State of Rhode Island, and George D. Flynn (alias David Roe), of the city of Fall River, in the Commonwealth of Massachusetts, and divers other persons to the grand jurors unknown, hereinafter referred to together as defendants; and Thomas Beardsworth (alias Stephen Doe), Manuel Furtado (alias Stephen Roe), Albert Walmsley (alias Charles Doe), William F. Borden (alias Charles Roe), and John Simpson (alias Alexander Doe), who are not indicted by reason of their having appeared before the

156 grand jury and testified relative to the matters set out in this indictment, continuously and at all times throughout the period of time from July 1st, 1914, to January 1st, 1915, at the town of Tiverton in said district of Rhode Island, in the first congressional district of Rhode Island and in the jurisdiction of this court, wilfully, unlawfully, and feloniously did conspire, combine, confederate, and agree together and with divers other persons to said grand jurors unknown, to defraud the United States by committing a wilfull fraud upon section 2 of Article I of the Constitution of the

United States in the manner and under the circumstances now here set forth, that is to say:

Said defendants were to defraud the United States by bringing about a general corruption of the voters of the town of Tiverton by a general bribing and offering to bribe of large numbers of voters in the town of Tiverton to vote for one Roswell B. Burchard, a candidate for Representative in Congress from the first congressional district of the State of Rhode Island on, to wit, the third day of November, A. D. 1914, at which time and place an election was held for a Representative in Congress in said first congressional district of the State of Rhode Island.

It being the intention of the said defendants to assist in bringing about the election of the said Roswell B. Burchard, who was a candidate for Representative in Congress at said election, and so procure for him by the means aforesaid a certificate of election from the State returning board of the State of Rhode Island that he, the said Roswell B. Burchard, might present said certificate of election to the clerk of the last preceeding House of Representatives before the meeting of the Sixty-fourth Congress in order that said Roswell B. Burchard might have his name placed upon the roll of Representatives elect, and with the further intention that the said Roswell B. Burchard aforesaid should secure the privileges, immunities, and emoluments of a Member of the House of Representatives of the United States of America, including the annual statutory salary of seventy-five hundred dollars (\$7,500) per year provided by said United States of America as compensation for a duly elected Member of the House of Representatives of the United States of America.

158

Overt acts.

And the grand jurors aforesaid, on their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said defendants and said coconspirators, at the several times and places in that behalf hereinafter mentioned, unlawfully did do the several acts following mentioned in connection with their several names:

1. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Manuel Furtado, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

2. That said Manuel Furtado, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, No-

vember 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

3. That said George D. Flynn, on, to wit, some day prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from John Simpson, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars 159 was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

4. That said John Simpson, on, to wit, some day prior to election day, November 3rd, 1914, the particular day being to the grand jurors unknown, paid to said George D. Flynn the sum of four hundred dollars (\$400), which said sum was to be used on election day, November 3rd, 1914, in said town of Tiverton to corrupt the election in said town of Tiverton by bribing voters therein.

5. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand from Thomas Beardsworth, who was then and there a licensed liquor dealer in the town of Tiverton, the sum of four hundred dollars (\$400), which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

6. That said George D. Flynn, on, to wit, some day a short time prior to election day, November 3rd, 1914, the exact date being to the grand jurors unknown, did demand of certain licensed liquor dealers, the names of said liquor dealers being to the grand jurors unknown, the sum of four hundred dollars (\$400) each, which said sum of four hundred dollars was to be used on election day in said town of Tiverton to bribe and corrupt voters in said town of Tiverton.

7. That said George R. Lawton did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton 160 on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

8. That said Henry C. Wilcox, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

9. That said Charles Hambley, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914, the exact date and time of such meeting being to the grand jurors unknown,

at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

10. That said Thomas Sisson, at Tiverton, did attend a meeting and conference held at the Stone Bridge Hotel in the town of Tiverton on some date prior to election day, November 3rd, 1914,
161 the exact date and time of such meeting being to the grand jurors unknown, at which time plans and arrangements were discussed and made for the bribery of voters, and did join in giving instructions relative to the bribery of voters and the purchase of votes at the election to be held November 3rd, 1914, in said town of Tiverton.

11. That said Charles Hambley, at Tiverton, on, to wit, election day, November 3rd, 1914, promised Charles E. Budlong, who was then and there a qualified voter in said town of Tiverton, to pay him (said Budlong) a sum of money, to wit, five dollars (\$5.00) for his vote for Roswell B. Burchard for Representative in Congress.

12. That said Henry C. Wilcox, at Tiverton, on, to wit, some date after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, instructed Charles E. Budlong to go to Charles Hambley for the money which Hambley had, on November 3rd, 1914, promised to pay said Budlong for his vote if the said Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

13. That said Charles Hambley, at Tiverton, on, to wit, some time after election day, November 3rd, 1914, the exact date being to the grand jurors unknown, at, to wit, said Hambley's residence in said town of Tiverton, did pay to said Charles E. Budlong the sum of five dollars (\$5) for his vote which he had on election day, November 3rd, 1914, promised to pay if the said Charles E. Budlong would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

162 14. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, some time prior to election day, November 3rd, 1914, had printed and prepared certain white tickets, which were used on election day, November 3rd, 1914, to give to voters as they entered the polling booth in the first voting district in said town of Tiverton.

15. That said James Moran, at Tiverton, who was then and there a supervisor in the first voting district in said town of Tiverton, on, to wit, said election day, November 3rd, 1914, did watch certain voters mark their ballots and then indicate to Louis Dubois by a nod of the head whether they had voted right or not.

16. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, distributed and caused to be distributed a large number of white tickets, to wit, three hun-

dred, which said white tickets entitled each voter who had possession of one to receive the sum of five dollars (\$5.00), after said James Moran had signalled that said voter had voted right.

17. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, promised one Joseph M. Muniz, who was then and there a qualified voter in said Tiverton, to pay him five dollars (\$5) for his vote, if the said Muniz would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices, which were to be voted for at the said time and place.

18. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, A. D. 1914, the exact date being to the grand jurors unknown, did
163 pay to Joseph M. Muniz the sum of five dollars (\$5), which he (said Kearns, alias), on the aforesaid date, had promised to pay said Muniz for his vote if he (said Muniz) would vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

19. That said Manuel Furtado, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, requested one Joseph M. Muniz to give him the names of certain voters, so that he (said Furtado) could arrange that said voters would be paid for their votes, cast at said election, November 3rd, 1914, in said town of Tiverton.

20. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, election day, November 3rd, 1914, did give to one Fred C. Richards, who was then and there a qualified voter in said town of Tiverton, a certain white ticket, and told said Richards to give said ticket to Louis Dubois, after he (said Richards) had voted.

21. That said Henry C. Wilcox, at Tiverton, on, to wit, some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, instructed Herbert L. Barker to go out and "influence and get all the votes he could."

22. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit some date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "There is five in it for you," and on Dunn saying,
164 "No," said Welsh (alias) then said, "I will make it ten."

23. That said Zenon St. Laurent, at Tiverton, on, to wit, election day, November 3rd, 1914, said to Thomas F. Dunn, who was then and there a qualified voter in the town of Tiverton, "The best I can do is \$5.00."

24. That said Patrick Welsh (alias Pat Welch), John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), at Tiverton, on, to wit, a few days before election day, November 3rd, 1914, the particular day and date being to the grand jurors unknown,

talked with Fred M. Richards, who was then and then a qualified voter in said town of Tiverton, and Samuel Stewart (alias), and said to Richards, "If you will call the supervisor, let him see how you vote, we will give you that other five besides the one this time."

25. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date or dates after election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, paid to Fred M. Richards the sum of \$10.00, said sum of \$10.00 being paid to said Richards for his vote at the election, November 3rd, 1914, for Roswell B. Burchard for Representative in Congress and divers other candidates for divers other offices, which were to be voted for at said time and place.

26. That said John Kearns (alias John Kerns), and Samuel F. Stewart (alias Sammy Stewart), and James Moran, at Tiverton, on, to wit, certain dates and days prior to election day, 1914, the particular days and places being to the grand jurors unknown, at, to wit, a certain clubroom conducted by said Stewart, procured certain qualified voters in said town of Tiverton, the number and names of

165 said voters being to the grand jurors unknown, to write their names in a certain book, which book was then and there used to keep a record of the voters in the town of Tiverton, who were to be paid for their vote at the election, November 3rd, 1914, in said town of Tiverton.

27. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, the particular date being to the grand jurors unknown, said to John M. Constance, "Why don't you come over with us? Those fellows have got no money. I think there is five in it for you if you vote the whole ticket. We have a meeting next week to fix the price."

28. That said Ralph Boardman, at Tiverton, on, to wit, some time before election day, November 3rd, 1914, did offer and promise to pay John M. Constance, who was then and there a qualified voter in said Tiverton, a certain sum of money, the particular date and sum of money being to the grand jurors unknown, if he (said Constance) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said time and place.

29. That said Herbert L. Barker, at Tiverton, on, to wit, November 3rd, 1914, offered and promised to Lester W. Chase, who was then and there a qualified voter in said town of Tiverton, the sum of \$5.00 if he (said Chase) would vote a certain way, to wit, for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices to be voted for at said time and place.

30. That said Herbert L. Barker, at Tiverton, on, to wit, a certain date before election day, November 3rd, 1914, the particular
166 date being to the grand jurors unknown, did say to Lester W. Chase, who was then and there a qualified voter in said town

of Tiverton, "If you will help us out there is five in it for you," with the intent and purpose to have said Chase cast his vote for certain candidates, including Roswell B. Burchard, who was then and there a candidate for Representative in Congress.

31. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did promise to pay Robert Bagshaw, who was then and there a qualified voter in the town of Tiverton, the sum of \$5.00 to vote for the whole ticket, on which was the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

32. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, the particular day being to the grand jurors unknown, did pay Robert Bagshaw the sum of \$5.00 for voting for the whole ticket headed by the name of Roswell B. Burchard, candidate for election to the Congress of the United States.

33. That said George W. Potter, at Tiverton, on, to wit, a certain date on or about election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did guard the door of a certain room in the Stone Bridge Hotel, in which room payment was made to voters who had voted for Roswell B. Burchard, candidate for Representative in Congress, and divers other candidates for divers other offices which were voted for at the same time and place.

34. That said Albert Walmsley, at Tiverton, on, to wit, some
167 time prior to election day, November 3rd, 1914, the particular date or dates being to the grand jurors unknown, did construct and erect voting booths in voting district No. 2 in said town of Tiverton, so that any person standing a few feet to the left of the voter making his ballot in said booths could see how such voter marked his ballot.

35. That said William C. Wood, at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did instruct and direct Albert Walmsley to construct and erect the voting booths in voting district No. 2 in said Tiverton in such a way that any person standing a few feet to the left of a voter using said booths could see how said voter marked his ballot.

36. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Alexander Howarth a certain sum of money, to wit, \$5.00, if he (said Howarth) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

37. That said John Kearns (alias John Kerns), at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay

to Alexander Howarth a certain sum, to wit, \$5.00, which he (said Kearns, alias) had promised to pay if he (said Howarth) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election in Tiverton, November 3rd, 1914.

38. That said Phillip Macomber, at Tiverton, on, 168 promise to pay to James W. Pearce a certain sum of money, to wit, \$5.00, if he (said Pearce) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

39. That said Phillip Macomber, at Tiverton, on, to wit, a certain date after election day, November 3rd, 1914, did pay to James W. Pearce a certain sum, to wit, \$5.00, which he (said Macomber) had promised to pay if he (said Pearce) would vote for certain candidates, including Roswell B. Burchard, candidate for Representative in Congress, at said election at Tiverton, November 3rd, 1914.

40. That said Phillip Macomber, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to James M. Manchester a certain sum of money, to wit, \$5.00, if he (said Manchester) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

41. That said Patrick Welsh (alias Pat Welch), at Tiverton, on, to wit, a certain date prior to election day, November 3rd, 1914, the particular date being to the grand jurors unknown, did offer and promise to pay to Andrew J. Judd a certain sum of money, to wit, the sum of \$5.00, if he (said Judd) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the said election in said town of Tiverton, November 3rd, 1914.

169 42. That said Herbert L. Barker, at Tiverton, on, to wit, election day, November 3rd, 1914, did offer and promise to pay to Irving A. Brown a certain sum of money, to wit, \$5.00, if he (said Brown) would vote for Roswell B. Burchard for Representative in Congress and for divers other candidates for divers other offices which were to be voted for at the election in said town of Tiverton, November 3rd, 1914.

And so the grand jurors, on their oath aforesaid, do present and say that said defendants aforesaid and the coconspirators aforesaid at the time and place aforesaid, and in the manner and form aforesaid, unlawfully, wilfully, fraudulently, feloniously, and wickedly, did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid to effect the object of said conspiracy, and in furtherance and in execution thereof and for the purpose of carrying out the object, design, and agreement

aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HARVEY A. BAKER,
United States Attorney.

A true bill.

HENRY V. A. JOSLIN, *Foreman.*

170 Thereafter, on, to wit, June 26, 1916, each of the 19 defendants filed demurrers, which, with the exception of the demurrers of George D. Flynn, are identical, and in accordance with a stipulation signed by counsel of all the parties the demurrers of Charles Hambly and George D. Flynn are included in this transcript, and the others are omitted.

In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

CHARLES HAMBLY, HENRY C. WILCOX, JAMES MORAN, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, Peter Clark, and George D. Flynn, defendants.

Indictment #160.
Violation of section 37, Criminal Code.

Stipulation reducing record.

In the above-entitled cause it is hereby stipulated by and between Harvey A. Baker, United States attorney for the District of Rhode Island, and Alexander L. Churchill, attorney for Charles Hambly, Henry C. Wilcox, James Moran, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, and Peter Clark; and John J. Fitzgerald, attorney for George D. Flynn, that the demurrers filed by Charles Hambly, Henry C. Wilcox, James Moran, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, and Peter Clark are identical in form and substance.

171 It is further stipulated that the clerk, in making up the transcript of the record, may omit therefrom the following papers and records, to wit: Demurrers of Henry C. Wilcox, James Moran, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Her-

bert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, Peter Clark.

It is also stipulated that this stipulation be made a part of the record on appeal.

HARVEY A. BAKER,

United States Attorney.

ALEXANDER L. CHURCHILL,

Attorney for Charles Hambly, Henry C. Wilcox, James Moran, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, and Peter Clark.

JOHN J. FITZGERALD,

Attorney for George D. Flynn.

172 District Court of the United States for the district of Rhode Island.

UNITED STATES OF AMERICA

vs.

CHARLES HAMBLY, ET ALS.

} Indictment No. 160.

Demurrer of Charles Hambly to indictment. (Filed June 26, 1916.)

And now the said Charles Hambly, one of the defendants, comes into court, and, having heard said indictment read, says that the said indictment and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law, and that he, the said defendant, is not bound by the law of the land to answer the same; and this, he is ready to verify.

Wherefore, for want of sufficient indictment in this behalf, the said defendant prays judgment, and that by the court he may be dismissed and discharged from said premises in said indictment specified.

To all counts.

And the said defendant herein shows to the court the following causes of demurrer to all of the counts in said indictment, and to each of them severally:

1. That each of said counts respectively fails to set forth any offense under the laws of the United States.

2. That each of said counts respectively fails to set forth any offense under the laws of the United States with such certainty that the defendant is thereby informed of the nature and cause of the

accusation against him, as required by the provisions of Article VI of Amendments to the Constitution of the United States.

173 3. That, so far as appears from the several counts of said indictment respectively, said defendant did not conspire to defraud the United States of any property or of any right of which the United States was possessed, or which it might under the law enforce.

4. That it does not appear that the object of any supposed conspiracy, as set forth in any of the several counts of said indictment respectively, was to defraud or deprive the United States of any right, matter or thing to which it was by law entitled.

5. That, so far as appears by the several counts of said indictment respectively, said defendant did not conspire to deprive the United States of any property or right, by deception and artifice, misrepresentation of concealment of a material fact.

6. That the supposed offenses, and each of them, to commit which was the object of conspiracy on the part of the defendant as set forth in the several counts of said indictment respectively, are, and at the time of the supposed conspiracy and conspiracies in said counts respectively set forth, were offenses against the State of Rhode Island and not offenses against the United States.

7. That the allegations of said indictment, and of the several counts thereof respectively, are so uncertain, vague, general, and indefinite that the defendant is not thereby sufficiently apprised as to the charge and charges therein and thereby intended to be made against him, to enable him intelligently to plead to said indictment and said several counts thereof respectively or properly to prepare his defense thereto.

174 8. That the bribery of voters at the general election referred to in the several counts of the said indictment, in the manner respectively set forth in said counts and which in said counts respectively are charged as the means by which it was proposed to defraud the United States in accordance with the supposed conspiracy in said counts respectively set forth, does not constitute a fraud upon the United States.

9. That the allegations of said several counts, respectively, fail to show that the said defendant conspired to do or cause to be done any act or thing which would prevent a Representative in Congress from being elected in accordance with law at the election referred to in said counts, respectively.

10. That the allegations of the several counts, respectively, fail to show that said defendant conspired to do or cause to be done any act or thing which would constitute a fraud on the United States.

To the first count.

And the said defendant herein shows to the court the following additional causes of demurrer to the first count of said indictment:

11. That it does not appear how or in what manner the enforcement and administration of certain laws of the State of Rhode Island, looking to the conduct of the election of Representative in Congress in the Congress of the United States, was to be unlawfully and corruptly prejudiced and hindered as set forth in the said count.

12. That it appears that the supposed conspiracy as set forth in the first count of said indictment to hinder the enforcement and administration of certain laws of the State of Rhode Island, looking to the conduct of an election of a Representative of the Congress of the United States, was a conspiracy to violate the laws of the State of Rhode Island, and was not a conspiracy to violate any law of the United States.

13. That it does not appear that the defendant conspired to prejudice and hinder the enforcement and administration of any law of the United States.

To the second count.

And the said defendant herein shows to the court the following additional causes of demurrer to the second count of said indictment:

14. That the supposed conspiracy to interfere, disturb, frustrate, and prevent the free and fair election of a Representative in Congress, as set forth in the second count by the bribery of the electors at such election, as set forth in this count, does not constitute an offense against the United States.

To the third count.

And the said defendant herein shows to the court the following additional causes of demurrer to the third count of said indictment:

15. That the supposed conspiracy set forth in the third count to accumulate large sums of money for the purpose of bribing voters to vote for a Representative in Congress in the manner set forth in said count does not constitute an offense against the United States.

16. That said count is double in that it charges the said defendant with more than one supposed conspiracy to defraud the United States, to wit, with a supposed conspiracy to accumulate a large sum of money for the purpose of bribing and corrupting voters, and also with a conspiracy to make payment and gifts of, and out of, said money to voters, on account of their having voted for Roswell B. Burchard, of Little Compton, as set forth in said count.

To the eighth count.

And the said defendant herein shows to the court the following additional causes of demurrer to the eighth count of said indictment:

17. That the supposed conspiracy to violate sec. 3, chapter 20, of the General Laws of the State of Rhode Island, 1909, as set forth in said count, was a violation of the laws of the State of Rhode Island, and not an offense against the United States.

18. That the supposed conspiracy to ascertain what voters, entitled to vote for Representative in Congress, at the election referred to, would be willing to receive bribes and give their votes for Representative in Congress, as set forth in said count, does not constitute an offense against the United States.

19. That the supposed conspiracy set forth in said count to make and assist in making payments and gifts of money to voters at the general election referred to for having voted for Representative in Congress, as set forth in said count, does not constitute an offense against the United States.

20. That said count is multiple in that it sets forth a supposed conspiracy to ascertain voters who would be willing to receive bribes for their votes for Representative in Congress, and also a conspiracy to pay and cause to be paid money to voters on account of their having voted for a Representative in Congress as set forth in said indictment.

By his attorneys:

ALEXANDER L. CHURCHILL.
JOHN S. MURDOCK.

177 District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA

vs.

CHARLES HAMBLY ET ALI.

} Indictment No. 160.

Demurrer of George D. Flynn to indictment. (Filed June 26, 1916.)

And now George D. Flynn, one of the defendants, comes into court, and having heard the said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that the said defendant is not bound by the law of the land to answer the same, and this he is ready to verify.

And the said defendant shows the following causes of demurrer to all of the counts in said indictment, and also to each of them severally:

1. That each of said counts respectively fails to set forth any offense under the laws of the United States.

2. That each of said counts respectively fails to set forth any offense under the laws of the United States with such certainty that the defendant is thereby informed of the nature and cause of the accusation against him, as required by the provisions of Article VI of amendments to the Constitution of the United States.

3. That each and all of said counts fail to set forth a conspiracy to defraud or deprive the United States of any right, matter, or
178 thing to which it was by law entitled.

4. That the allegations of each and every count respectively are uncertain, vague and indefinite to the prejudice of the defendant.

5. That it does not appear that the defendants are the same in each count.

6. And the said defendant herein shows the following additional causes of demurrer to the first count:

(a) Because the allegation of the laws of Rhode Island is vague, indefinite and uncertain.

(b) Because the allegation of the time of the conspiracy is absurd and repugnant in that it alleges a conspiracy after the election.

(c) Because there is no allegation excepting by argument that an election for Representative in Congress was held or was to be held.

7. And the said defendant herein shows the following additional causes of demurrer to the second count:

(a) Because there is no allegation of the names of the divers other persons then acting and to act in concert and unlawful collusion with the defendants, and no allegation that the said names are unknown.

(b) Because there is no allegation of what "the other corrupt and unlawful rewards" were, and no allegation that they were unknown.

179 (c) Because the count charges a conspiracy by: first, the named defendants and the unknown defendants; and second, the named persons who were not indicated; and it also charges a conspiracy by: first, the defendants aforesaid, including those named and those unknown; and second, divers other persons who are not alleged to be unknown and who are not indicated by name.

(d) Because there is no allegation of the name of the person the defendants intended to have elected and no allegation that the name of that person was unknown.

8. And the said defendant herein shows the following additional causes of demurrer to the third count:

(a) Because there is no allegation of the names of the persons to be bribed and no allegation that the names were unknown.

(b) Because there is no allegation that the purpose of the bribery was to bribe voters for the congressional election.

(c) Because there is no allegation of the date of the election at which the voters were to be bribed and at which their votes were to be cast.

(d) Because there is no allegation that the voters were to be bribed for voting for Mr. Burchard for Congressman.

(e) Because the allegation that the defendants conspired to bribe voters before an election for having voted at that election is absurd and repugnant.

(f) Because the allegation of the time of the conspiracy is absurd and repugnant.

9. And the said defendant herein shows the following additional causes of demurrer to the fourth count:

(a) Because the allegation of the time of the conspiracy is absurd and repugnant.

10. And the said defendant herein shows the following additional causes of demurrer to the fifth count:

(a) Because the allegation of the time of the conspiracy is absurd and repugnant.

(b) Because there is no allegation of the names of the persons to be bribed and no allegation that those persons were unknown.

11. And the said defendant herein shows the following additional causes of demurrer to the sixth count:

(a) Because there is no allegation of the names of the persons to be bribed and no allegation that those persons were unknown.

(b) Because there is no allegation of the means and manner to be used in bribing, in offering and in attempting to bribe, and there is no allegation that the manner and means were unknown.

12. And the said defendant herein shows the following additional causes of demurrer to the seventh count:

(a) Because the allegation of the time of the conspiracy is absurd and repugnant.

(b) Because there is no allegation of the names of the persons to be bribed and no allegation that those persons were unknown.

13. And the said defendant herein shows the following additional causes of demurrer to the eighth count:

(a) Because the allegation of the time of the conspiracy is absurd and repugnant.

(b) Because the allegation about the said persons to the grand jurors unknown, whose will, dictation, direction, and requirement was to be followed in voting, is vague, uncertain, and indefinite, and because there is no previous reference to said persons to the grand jurors unknown.

(c) Because the allegation, or some or one of them, referring to the persons whose will and dictation was to be followed, is vague, uncertain and indefinite and disjunctive.

14. And the said defendant herein shows the following additional causes of demurrer to the ninth count:

(a) Because the allegation of the time of the conspiracy is absurd and repugnant.

(b) Because there is no allegation of the names of the persons to be bribed and no allegation that those persons were unknown.

15. And the said defendant herein shows the following additional causes of demurrer to the tenth count:

(a) Because the allegation of the time of the conspiracy is absurd and repugnant.

16. And the said defendant herein shows the following additional causes of demurrer to the eleventh count:

(a) Because the count alleges that the defendants, including some persons named and divers other persons unknown, together with five persons who are not indicted, conspired with divers other persons unknown, said allegation being vague, uncertain, and indefinite, to the prejudice of the defendant.

17. And the said defendant herein shows the following cause of demurrer to all of the counts in said indictment and to each of them severally:

(a) Because the defendants include not only the persons named but divers other persons unknown.

Wherefore, for want of sufficient indictment in this behalf, the said defendant prays judgment and that by the court he may be dismissed and discharged from said premises in said indictment specified.

By his attorneys:

JNO. W. CUMMINGS.
JOHN J. FITZGERALD.

183 The above-entitled case was called for hearing before the Honorable Arthur L. Brown, United States district judge, on the indictment and demurrers thereto on, to wit, August 14, 1916, and was fully heard and argued by the attorneys for the respective parties. The opinion of the court sustaining the demurrers was filed on the same day based upon the opinion of this court in *United States vs. Mathew Gradwell et al.*, indictment No. 114, which opinions are in the following language:

184 District Court of the United States, District of Rhode Island,

UNITED STATES

Indictment No. 114.

MATTHEW T. GRADWELL ET ALS.

Opinion on demurrer to indictment, July 28, 1916.

BROWN, J.: This in an indictment under section 37 of the Criminal Code, charging a conspiracy to defraud the United States by corrupting a general election at which a Representative in Congress was voted for and elected.

The fundamental question is whether this conspiracy statute is to be so broadly construed as to comprehend a conspiracy of this character.

It is not contended that the conspiracy was to commit any offense against the United States, but the indictment rests upon the words, "to defraud the United States in any manner or for any purpose." It is well settled that these words are broad enough to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of the Government: *U. S. v. Barnow*, 239 U. S., 74, 79; *Haas v. Henkel*, 216 U. S. 462, 479; *U. S. v. Plyler*, 222 U. S., 15; *U. S. v. Curley*, 122 Fed. 738, 130 Fed. 1; but these and all cases cited, except one, relate to functions of the organized Government and not to a step in the organization of the Government.

But a single case has been cited in which the statute has been extended to include fraud in the election of a Member of Congress: *U. S. v. Aczel et al*, 219 Fed., 917, 921, 923, 934, 938. The learned judge, after a consideration of *Curley v. U. S.*, 130 Fed. 1, 122 Fed. 738, and *Haas v. Henkel*, 216 U. S. 462, expressed the opinion that—

185 "If a conspiracy which is calculated to * * * destroy the value of the operations and reports of the Bureau of Statistics of the Department of Agriculture as fair, impartial, and reasonably accurate, would be to defraud the United States by depriving it of its lawful right and duty of promulgating or diffusing the information so officially acquired in the way and at the time required by department regulations, it is perfectly plain that a conspiracy which is calculated to obstruct and impair, corrupt, and debauch an election where Senators and Representatives in Congress are to be elected, would be to defraud the United States by depriving the Government itself of its lawful right to have such Senators and Representatives elected fairly and in accordance with the law."

Apparently the opinion proceeds on the assumption of an analogy between the obstruction of operations of the constituted Government and obstruction of an election by which the people of the State make their choice of Representatives in Congress. Whether such assumption is justified requires careful examination and further consideration.

Assuming that the United States has such an interest in the election of a Representative in Congress as gives it constitutional power to pass statutes safeguarding such an election, no such statute is involved, and in the present case we are not directly concerned with any other existing statute passed by Congress to this end. The question is whether section 37 of the Criminal Code, in its inclusion of conspiracies to defraud, was intended as a statute for the protection of elections for Representatives in Congress as well as for the protection of operations of the organized Government.

The existence of a constitutional power in Congress to legislate in respect to the conduct of those elections whereby the people of a

particular State choose their Representatives in Congress is of slight assistance in determining whether, by this conspiracy statute, it was intended to do so.

For many years this power was reserved and was not exercised.

In the dissenting opinion of Mr. Justice Lamar in *U. S. v. Moseley*, 238 U. S., 388, is a reference to the legislation under this 186 power, and to the report of the committee (House Report No. 18, 53rd Congress, 1st section) as to the policy of Federal legislation concerning elections held under State laws. See also *ex parte Siebold*, 100 U. S., 371; *ex parte Clarke*, 100 U. S., 309.

The question of protecting the United States against the class of frauds which involve merely the relations of the offender and the United States, and the question of legislating respecting the conduct of the elections whereby the people of the respective States choose their Representatives in Congress are substantially distinct; so distinct in substance that it is highly improbable that it was intended to legislate on both together. The *Curley* case, 122 Fed. 738, 130 Fed. 1; *Haas v. Henkel*, 216 U. S., 462, 479; and the cases other than the *Aczel* case, involved no consideration of the relations between State and National Governments, or of the political policy of exercising the constitutional power of Congress to legislate concerning the elections which are primarily the act of the people of the States in choosing their Representatives.

It is of course possible, by the use of abstract terms, to bring under a single classification things which are practically and substantially different. It is not enough, however, that the United States may be able to show that a violation of a constitutional right of the United States was contemplated by conspirators. We must find other than a verbal justification for giving to section 37 of the Criminal Code so broad a scope. It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute because not within its spirit nor within the intention of its makers: *Holy Trinity Church v. U. S.*, 143 U. S., 457, 459.

The right of the United States in respect to these elections is a constitutional right to legislate or not to legislate as is deemed 187 expedient or necessary. With this right, or with its exercise, no interference is charged in the indictment. But it is said that there is also in the Government a right to have its Senators and Representatives elected fairly and in accordance with law, even when Congress has not legislated to define the right. It is inaccurate to say that the indictment charges a conspiracy to defraud the Government of this right, nor can it be said that it is charged that the United States is obstructed in the performance of any active function in respect to this right. It may be said that this theoretical right is violated by doing what is inconsistent with it, and that a violation of the right is in a sense a fraud upon the United States. But in the inquiry whether section 37 was intended to vindicate this right, or to afford protection against its violation, we may consider what protection is otherwise afforded.

In ex parte Siebold, 100 U. S., 392, it was said:

"As a general rule it is no doubt expedient and wise that the operations of the State and National Governments should, so far as practicable, be conducted separately, in order to avoid undue jealousies and jars and conflicts of jurisdiction and power. But there is no reason for laying this down as a rule of universal application."

In the dissenting opinion in ex parte Clarke, 100 U. S., 420, Mr. Justice Field emphasizes the interest of the States in maintaining the purity of such elections, and says:

"I do not think that any apprehension need be felt if the supervision of all elections in their respective States should also be left to them."

This is a statement of a political policy which seems generally to have prevailed over the opposite policy by the repeal of the statutes which were adopted in reconstruction times.

In considering whether section 32 was intended as an exercise of constitutional power to protect against fraud in State elections, it is proper to consider that the so-called right of the United States, to have duly chosen Representatives in Congress, is safeguarded by the primary interest of the people of the States in this respect and by the laws of the States; and that for this reason congressional legislation on the subject generally has been regarded as unnecessary.

It can not be said that Congress was under any positive duty to legislate for the protection of State elections for Members of Congress or that there is any presumption of an intent to do so. But the right of the United States to duly elected Congressmen is protected by the Constitution itself in a provision which indicates distinctly the policy of excluding questions of this character from the jurisdiction of the courts, as well as of avoiding conflict between State and National Governments, even though the right of Congress to legislate, if necessary, is reserved.

The House of Representatives is made the final judge of the elections, returns, and qualifications of its own members. The Representatives of all the other States pass upon the question whether the Representative of a particular State has been duly elected. The apparent intent was to remove such questions from executive, judicial, or even legislative control and to confide them to the Representatives directly chosen by the people. The United States can not be defrauded by the payment of a salary to one whose right to a seat is formally established by the House.

This constitutional provision is the ultimate protection of the United States in its so-called right to have duly elected Representatives.

It is urged that the conspiracy is to deceive and defraud the House of Representatives, a body made up of officers of the United States. In *Lamar v. U. S.*, May 1, 1916, it was held by the Supreme Court that a Member of the House was a legislative officer, and that section 32 of the Criminal Code was applicable to false personation

of such an officer. But, as was said in the opinion, the issue in that case was not a constitutional one but of statutory construction.

Nothing in that opinion serves to abolish the clear distinction pointed out in *Burton v. U. S.*, 202 U. S., 344, 369, 370, between offices created by or existing under the direct authority of the National Government, as organized under the Constitution, and offices the appointments to which are made by the States, acting separately, albeit proceeding in respect to such appointments under the sanction of that instrument. It was said:

"While the Senate, as a branch of the legislative department, owes its existence to the Constitution and participates in framing laws that concern the entire country, its members are chosen by State legislatures and can not properly be said to hold their places under the Government of the United States."

Primarily a fraud upon a State election for Representatives in Congress is a fraud upon the right not of the United States Government but of the people of a particular State. It may be a fraud on the elective franchise and civil rights of citizens, and the extent to which Congress has exercised its constitutional right in that respect is defined in chapter 3 of the Criminal Code, which is not here invoked.

In chapter 4, "Offenses against the operations of the Government," are treated as a distinct classification, though it may be said that the chapter includes also a section relating to Federal elections, etc. Section 37, which is included in chapter 4, can be given full effect as a statute for the protection of the operations of the organized government. If we regard it as a statute relating to the first steps which are taken by the citizens of States in the choice of Representatives and in the organization of the Government, we then may have the United States asserting in the courts the illegality of the action of the people of the State in the choice of Representatives, and this in spite of the constitutional provision that the ultimate decision of the question is not entrusted to any one of the departments of the Government, either executive, judicial, or legislative, but to a special tribunal—the House itself.

It does not matter that the charge is only of conspiracy to elect illegally and of overt acts in pursuance of that conspiracy. If bribery in State elections is not made a Federal offense because of the primary interest of the States in protecting their own elections and because of the provision of a special constitutional tribunal for the trial and settlement of such questions, the same reasons exist against trials for conspiracy to bribe. A charge of a conspiracy to bribe, with bribery as an overt act, may bring before the court substantially the same questions as if the statute were directed against bribery.

The political considerations of the relation between the people of the State and the National Government are substantially the same in both cases.

If, for reasons of public policy, the constitutional power to legislate in the one case has been reserved, it seems inconsistent that it should have been exercised in the other.

Every completed bribery could be charged as a conspiracy to bribe, with overt act of bribery, and thus the courts might be required to adjudicate upon the same matters that are to come before the House, or upon which the House already has decided. The rule that the judicial tribunals must not hamper or embarrass the other departments by prejudging the questions which they will have to decide or attempting to review the decisions already made (Black's Const. Law, p. 85) affords also a reason for adopting a construction restricting section 37 to frauds affecting the operations of Government and for not extending it to frauds affecting the action of the people of a particular State toward organizing the Government by the election of Representatives.

The policy of leaving to the States themselves the control of elections for presidential electors and of providing for frauds in such elections (see *In re Green*, 134 U. S., 377, 380) seems consistent with the same policy respecting Representatives in Congress.

191 Yet the argument of the United States as to the scope of section 37 would require that a conspiracy to commit fraud in the election of presidential electors should be included.

The right to "duly elected Congressmen" is of the same nature as the right to a duly elected President and Vice President, etc.

In fact, if a violation of a theoretical constitutional right of the Government not declared by statute is to be deemed a fraud, the conspiracy statute will be so broadened as to expand it beyond the scope of legislative foresight. Repugnancy to a reserved constitutional power of Congress to enact law can hardly be a practical test of fraud. Inconsistency with what Congress has power to protect, but has not protected, by law, or with reasons why it might legislate if it saw fit, is not a satisfactory test of what shall constitute a defrauding of the United States under section 37.

As the defendants' brief points out, there is a sharp and clear distinction between a conspiracy to obstruct the administration of a law of the United States and a conspiracy which affects the constitution of one of the great departments of Government. While there are two sides to the matter, one State and one National, the interest of the United States is so well protected otherwise that it can not be presumed that the conspiracy statute was enacted with any thought of the application which the Government now seeks to make. To so apply the statute takes it out of the definite sphere of protecting and assisting the operation of organized Government, into the distinct sphere of State action in performing what is peculiarly a State function—the choice of State Representatives in Congress. It also confers upon the courts an extensive jurisdiction in respect to political matters, with the risk of judicial decisions at variance with the decisions of the tribunal which has power of final decision.

192 It might so affect a candidate for Representative, or a Representative elect, or even a presidential elector, as to impose upon him the duty of appearing in court for vindication of his rights or his character, though the Constitution has provided another tribunal for that purpose, and though statutes have provided a procedure differing from that of the courts. It would impose upon the Executive and upon the Department of Justice the duty of enforcing the law, of making the necessary investigations, and would bring that one of the executive departments into the control of prosecutions affecting the constitution of a branch of the legislative department.

Aside from the opportunity which would be afforded for making the courts an instrument for influencing political matters we may consider that as a consequence we may have a conspiracy to corrupt a State election tried before the United States court of another district and in another State. Under the decision in *Hyde v. U. S.*, 225 U. S. 347, overt acts performed in one district by one of the conspirators give jurisdiction to the court of that district as to all the conspirators. This would give to the Department of Justice an opportunity to select a place of trial in some State remote from the actual place of conspiracy, or from the State in which the Representative was elected, because of the commission of some overt act, such as the writing of a letter by one of the conspirators in furtherance of the conspiracy.

It is impossible to believe that in extending the conspiracy statute to embrace frauds other than those upon the revenue it ever occurred to any Members of Congress that they were legislating upon the subject of congressional or presidential elections, or that questions of public policy as to the relations between State and Nation were involved. This subject is so important, and of such special
193 character, that it would have been dealt with specifically and not in an omnibus clause, had it been intended to deal with it at all.

The present indictment, in my opinion, is founded upon an undue extension of the conspiracy act which carries it beyond its proper sphere and brings it into direct conflict with the policy of noninterference in State elections for Representatives in Congress, a policy evidenced by the general course of legislation or nonlegislation on the subject of the relations of State and National Government in respect to bribery at congressional elections.

Because the subject matter of the regularity of State elections for Representatives is so substantially different from that of any of the other cases of fraud which have been held to be within the conspiracy statute—because the rights of the United States in such an election are to be determined by the House of Representatives itself, and are to be protected by the States which have the primary interest, and a more direct interest than the Government itself in the choice of Representatives—because the questions are to such an extent political questions, and for other reasons above stated, I am of the opinion

that section 37 can not be so construed as to include the matters set forth in this indictment. I am therefore of the opinion that the demurrers must be sustained on the fundamental ground. If we assume, however, that section 37 covers a conspiracy to corrupt a State election for Representatives in Congress by bribery of voters there will remain the question whether this indictment properly charges such a conspiracy. The briefs deal with this matter at great length, but only a part of the arguments need be considered.

It is charged that the defendants conspired to defraud the United States by corrupting and debauching the general election held in the town of Coventry, on the third day of November, 1914, at which said election a candidate for Representative in Congress was voted for, chosen, and elected, etc. In support of this charge the indictment alleges that the defendants did devise a scheme to bribe, influence, corrupt, and debauch the voters of the town of Coventry, on to wit, the third day of November, 1914, at which time and place a general election was held for the election of State officers and for a Representative in Congress. The indictment proceeds to charge "as a part of said conspiracy," various subconspiracies, so to speak, several of which have no apparent or direct relation to the election of a Representative in Congress, but relate to corruption of the so-called general election. One "part of said conspiracy" is to bribe and to vote qualified electors for Representative in Congress. Then follow as parts of said conspiracy, charges of conspiracy to defraud by committing a "wilful fraud" upon art. 1, sec. 2, of the Constitution; sec. 2, of chap. 123 of the General Laws, R. L., 1909, relating to liquor licenses; and other topics; sec. 8, chap. 20, of the General Laws, R. L., 1909, respecting bribery at elections; and various other matters too numerous for brief statement. There follows an allegation that in pursuance of "said unlawful and felonious conspiracy," etc., and to effect the object of the same, certain acts were done. The overt acts are thus connected not with any specific part of the conspiracy, but with the one main conspiracy, to wit, to corrupt the general election. It is impossible to tell from the indictment whether the overt acts relate to the election for Representative in Congress or to the election for State officers. It is impossible to reject or to uphold these charges which are not connected with the election for Representative in Congress or those charges which unambiguously refer to the general election, comprehending the State officers as well as a Representative in Congress. By thus confusing elections over which Congress has no control and elections over which it may constitutionally exercise control, and

by referring the overt acts to an equivocal unit, the "general election," we have irrelevant and relevant matters so firmly entangled that it seems impossible to extricate them. The allegations which do not appear to have a connection with, or are only argumentatively connected with, the election of Representative, can not be rejected, for if this were done it would be impossible to say whether in the opinion of the grand jury the overt acts were in pursuance of what was rejected or of what was retained.

Were this indictment to stand it would be possible for the United States to introduce a large amount of evidence relating to the election of State officers, or to other State matters, or of so ambiguous a character that to what it did relate could only be guessed.

The decision in *re Coy*, 127 U. S. 731, which relates to returns covering both State and Federal elections, affords not the slightest support for this indictment or for the theory of a "general election" upon which it is drawn. On the contrary, it is essential that the indictment should be strictly confined to the election for Representatives and should avoid all confusion with State elections. *Bliss v. U. S.*, 153 U. S. 308; *U. S. v. Morrissey*, 32 Fed. 147, 152.

I am of the opinion, therefore, that the indictment is demurrable also on the ground that the indictment is so vague, uncertain, insufficient, and duplicitous in its allegations that the defendants are not sufficiently apprised of the nature of the charge against them to enable them to prepare their defense thereto. Even if it be a crime under section 37 to conspire to corrupt an election for a Representative in Congress, I am of the opinion that the defendants would be deprived of their right to be informed of the nature of the offense by putting them to trial upon this indictment.

I desire to acknowledge the great diligence, research, and ability shown alike by counsel for the United States and for the defendants in the preparation of the comprehensive briefs upon the important questions that are raised in this case.

For the reasons stated in the opinion the demurrers are sustained.

197 *Opinion on demurrer to the indictment No. 160.* (August 14, 1916.)

Brown, J.: It is agreed by counsel for the United States and by counsel for defendants that the principal question raised upon demurrer, namely, whether section 87 of the Criminal Code is to be construed to embrace a conspiracy to bribe electors at an election for a Representative in Congress, is the same question decided by this court in the case of *United States v. Matthew W. Gradwell et al.*, indictment No. 114. The demurrers must, therefore, be sustained in this case on the same ground.

It is unnecessary, in view of this finding, to consider any of the other grounds of demurrer upon which the defendants in the present

case rely; and without expressing an opinion on such other grounds and without prejudice to the rights of the defendants to be heard thereon, if necessary, the demurrers are sustained upon the ground that upon a proper construction of the statute on which the indictment is founded it does not cover a conspiracy of the character charged.

Demurrers sustained.

And on, to wit, August 22, 1916, there was entered the following:

198 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.

CHARLES HAMBLY, HENRY C. WILCOX, JAMES Moran, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, Peter Clark, and George D. Flynn, defendants.

Indictment #160.
Violation of section 37, Criminal Code.

Order sustaining demurrers to indictment. Entered August 22, 1916.

This cause having come on to be heard upon the demurrers of the defendants to the indictment and having been argued by counsel, it is considered that said demurrers be, and the same hereby are, sustained to each count of the indictment.

Entered as the order of this court this 22nd day of August, A. D. 1916.

WILLIAM P. CROSS,
Clerk.

Enter August 22, 1916.

ARTHUR L. BROWN,
United States District Judge for the
District of Rhode Island.

199 Thereafter, to wit, on August 22, 1916, there were filed by the plaintiff a petition for writ of error and assignment of errors, and the petition was allowed and the writ of error issued on said day. And thereafter, on, to wit, August 24, 1916, a citation was issued returnable at the Supreme Court of the United States in the city of Washington, in the District of Columbia, on the 21st day of September next.

200 In the District Court of the United States for the District of
Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

CHARLES HAMBLY, HENRY C. WILCOX, JAMES
Moran, Patrick Welch, Louis Dubois, John
Kearns, George R. Lawton, Zenon St. Lau-
rent, Samuel S. Stewart, George W. Potter,
Herbert L. Barker, Philip Macomber, Thomas
Sisson, Ralph Boardman, John Cain, John
Peacock, William C. Wood, Peter Clark, and
George D. Flynn, defendants.

Indictment #160.
Violation of sec-
tion 37, Criminal
Code.

Petition for writ of error. (Filed and allowed August 22, 1916.)

To the Honorable Arthur L. Brown, Judge of said Court:

Now comes the United States of America, by Harvey A. Baker, United States attorney for the district of Rhode Island, and respectfully shows to the court that on the twenty-second day of August, A. D. 1916, the court made an order in said cause sustaining the demurrers of the defendants to the indictment in said cause, and your petitioner feeling itself aggrieved by the said ruling of the court entered therein as aforesaid, herewith petitions the court for an order allowing the petitioner to prosecute a writ of error to the Supreme Court of the United States under the law (act approved March 2, 1907, 34 Statutes at Large, page 1246) in such case made and provided.

The premises considered, your petitioner prays that a writ of error be issued in this behalf to the Supreme Court of the United States, sitting at Washington, D. C., for the correction of
201 the errors complained of and hereby assigned.

HARVEY A. BAKER,

United States Attorney for Petitioner in Error.

202 In the District Court of the United States for the District of
Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

CHARLES HAMBLY, HENRY C. WILCOX, JAMES
Moran, Patrick Welch, Louis Dubois, John
Kearns, George R. Lawton, Zenon St. Lau-
rent, Samuel S. Stewart, George W. Potter,
Herbert L. Barker, Philip Macomber, Thomas
Sisson, Ralph Boardman, John Cain, John
Peacock, William C. Wood, Peter Clark, and
George D. Flynn, defendants.

Indictment #160.
Violation of sec-
tion 37, Criminal
Code.

Order allowing writ of error. (Entered August 22, 1916.)

The foregoing cause coming on to be heard upon petition for writ of error and assignment of errors submitted herewith, it is upon

consideration thereof ordered that said petition be granted and writ of error allowed.

Entered as the order of this court this 22nd day of August, A. D. 1916.

WILLIAM P. CROSS, Clerk.

ARTHUR L. BROWN,

United States District Judge for the
District of Rhode Island.

Enter August 22, 1916.

203 In the United States District Court for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

Petition for writ of error. (Filed and allowed August 22, 1916.)
To the Honorable Arthur L. Brown, Judge of said Court:
Now comes the United States of America, by Harvey A. Baker, CHARLES HAMBLY, HENRY C. WILCOX, JAMES MORAN, Patrick Welch, Louis Dubois, John Keearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, Peter Clark, and George D. Flynn, defendants.
Assignment of errors. (Filed August 22, 1916.)

Now comes the United States of America, plaintiff in said cause, by Harvey A. Baker, United States attorney for the district of Rhode Island, and in connection with the plaintiff's petition for a writ of error in this cause, assigns the following errors upon which plaintiff in error relies to reverse the judgment of the court herein, as appears of record, to wit:

The court erred in sustaining the demurrer to each count of the indictment in said cause.

The court erred in holding that the conspiracy to defraud the United States set out in each count of the indictment is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

204

The court erred in holding that the conspiracy to defraud the United States set out in each count of the indictment related not to the functions of organized government but to a step in the organization of the government.

IV.

The court erred in holding that a conspiracy to defraud the United States relating to a step in the organization of government is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

V.

The court erred in holding that section 37 of the Criminal Code in its inclusion of conspiracies to defraud the United States was not intended as a statute for the protection of elections for Representatives in Congress.

VI.

The court erred in holding that a conspiracy to deprive the United States of the right to have its Representatives in Congress elected by the people secured to the United States by section 2 of article 1 of the Constitution is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

VII.

The court erred in holding that each count of the indictment did not set out a conspiracy to defraud the United States of the right to have its Representatives in Congress elected fairly and in accordance with law punishable under section 37 of the Criminal Code.

VIII.

The court erred in holding that a conspiracy to defraud the United States of the right to have its Representatives in Congress elected fairly and in accordance with law is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

IX.

The court erred in holding that the House of Representatives is a special constitutional tribunal for the trial and settlement of

The court erred in holding that a conspiracy to fraudulently procure the statutory salary of a Representative in Congress for a man who was to be illegally and fraudulently elected is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

X.

The court erred in holding that a conspiracy to deceive and defraud the House of Representatives is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XI.

The court erred in holding that a conspiracy to procure the election and return of a Member of the House of Representatives by means of the bribery of persons qualified to vote for Representative in Congress is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

206

XII.

The court erred in holding that a conspiracy to violate in the conduct of an election for a Representative in Congress the State laws against bribery of electors made for the protection of elections of Representatives in Congress is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XIII.

The court erred in holding that a conspiracy to deprive the United States of the protection of the State laws against bribery in the election of Representatives in Congress is not a conspiracy to defraud the United States punishable under section 37 of the Criminal Code.

XIV.

The court erred in holding that a conspiracy to violate a constitutional right of the United States not declared by statute is not such a conspiracy to defraud as is punishable by section 37 of the Criminal Code.

XV.

The court erred in holding that section 37 of the Criminal Code was not intended as an exercise of constitutional power to protect the United States against fraud in elections of Representatives in Congress.

XVI.

The court erred in holding that the House of Representatives is a special constitutional tribunal for the trial and settlement of bribery in the elections of Representatives in Congress.

207

XVII.

The court erred in holding that a fraud upon a State election for Representative in Congress primarily is not a fraud upon the right of the United States but of the people of the particular State.

XVIII.

The court erred in holding that the House of Representatives is not a body made up of officers of the United States.

XIX.

The court erred in holding that a conspiracy to deprive the United States of its right to a duly elected Congressman is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XX.

The court erred in holding that each count of the indictment did not set forth a plan to defraud the United States which is punishable under section 37 of the Criminal Code, for the reason that it carries the conspiracy statute beyond its proper sphere and brings it into direct conflict with the policy of noninterference in State elections for Representative in Congress.

XXI.

The court erred in holding that section 37 of the Criminal Code can not be construed so as to include the matters set forth in this indictment.

208 Wherefore the United States of America, as plaintiff in error, prays that the judgment of said court be reversed.

HARVEY A. BAKER,
United States Attorney.

209 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.

CHARLES HAMBLY, HENRY C. WILCOX, JAMES MORAN, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, Peter Clark, and George D. Flynn, defendants.

Indictment #160.
Violation of section 37, Criminal Code.

Præcipe to clerk as to make up of transcript.

To William P. Cross, Esq., clerk of the United States District Court for the District of Rhode Island:

You are hereby requested to prepare a transcript of record to be filed in the Supreme Court of the United States, pursuant to the writ of error allowed in the above-entitled cause and including in such transcript of record the following and no other papers, to wit:

1. The indictment filed in said cause on May 5, 1916.
2. The demurrers of the defendants to said indictment filed on June 26, 1916.

3. The order and final judgment rendered in said court on August 22, 1916, sustaining the demurrers to the indictment.

4. The opinion of the court giving its reasons for sustaining said demurrers.

5. The opinion of the court on demurrer to the indictment in United States vs. Gradwell et al. Indictment #114 referred to by the court in its opinion in this case.

210 6. The petition for a writ of error.

7. The order granting the writ of error.

8. Assignment of errors.

9. The writ of error.

10. Citation to defendants in error.

11. These directions.

12. Clerk's certificate.

And you will omit all other papers.

HARVEY A. BAKER,

United States Attorney, for Plaintiff in Error.

211

Citation on writ of error.

UNITED STATES OF AMERICA, ss:

The President of the United States to Charles Hambly, Henry C. Wilcox, James Moran, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, Peter Clark, and George D. Flynn, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, in the District of Columbia, on the twenty-first day of September next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Rhode Island, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arthur L. Brown, judge of the [SEAL.] District Court of the United States for the District of Rhode Island, this twenty-fourth day of August, in the year of our Lord one thousand nine hundred and sixteen.

ARTHUR L. BROWN,

United States District Judge, District of Rhode Island.

212

I hereby, this 24th day of August, 1916, accept due and legal personal service of this citation on behalf of Charles Hambly, Henry C. Wilcox, James Moran, Patrick Welch, Louis Dubois, John

Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, and Peter Clark, defendants, and acknowledge receipt of the præcipe for making transcript and assignments of error.

ALEXANDER L. CHURCHILL,
Counsel for said Defendants.

I hereby, this twenty-fifth day of August, 1916, accept due and legal personal service of this citation on behalf of George D. Flynn, defendant, and acknowledge receipt of the præcipe for making transcript and assignments of error.

JOHN J. FITZGERALD,
Counsel for George D. Flynn.

(Indorsed:) In the District Court of the United States for the District of Rhode Island. United States of America, plaintiff, vs. Charles Hambly, Henry C. Wilcox, James Moran, Patrick Welch, Louis Dubois, John Kearns, George R. Lawton, Zenon St. Laurent, Samuel S. Stewart, George W. Potter, Herbert L. Barker, Philip Macomber, Thomas Sisson, Ralph Boardman, John Cain, John Peacock, William C. Wood, Peter Clark, and George D. Flynn, defendants. Citation on writ of error. Filed August —, 1916. ———, clerk.

213

Clerk's certificate.

UNITED STATES OF AMERICA,

District of Rhode Island, ss:

I, William P. Cross, clerk of the District Court of the United States for the District of Rhode Island, do hereby certify that the foregoing is a true copy of the record and all the proceedings had in an indictment entitled No. 160, United States of America, plaintiff, vs. Charles Hambly et als, defendants, in said District Court determined, together with the plaintiff's petition for writ of error, order allowing same, assignment of errors, the opinion of the District Court in indictment No. 144 and in indictment No. 160, præcipe, the original citation on appeal with the acknowledgment of service endorsed thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Providence in said district, this 9th day of September, A. D. 1916.

[SEAL.]

WILLIAM P. CROSS, *Clerk.*

(Indorsed:) File No. 25,514. Rhode Island D. C. U. S. Term No. 684. The United States, plaintiff in error, vs. Charles Hambly, Henry C. Wilcox, et al. Filed September 28th, 1916. File No. 25,514.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES, PLAINTIFF IN ERROR,	}	No. 683.
v.		
MATHEW T. GRADWELL ET AL.		

THE UNITED STATES, PLAINTIFF IN ERROR,	}	No. 684.
v.		
CHARLES HAMBLY ET AL.		

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND.*

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and in accordance with the provisions of the Criminal Appeals Act, 34 Stat. 1246, moves the court to advance the above-entitled causes for joint hearing on a day convenient to the court.

Defendants were indicted in the District Court of the United States for the District of Rhode Island for conspiracy to defraud the United States by the corruption of a general election at which a

Representative in Congress was voted for and elected, in violation of section 37 of the Criminal Code.

Demurrers to the indictment were sustained, the District Court holding *inter alia* that a conspiracy to corrupt a State election at which a Representative in Congress is chosen is not a conspiracy to "defraud the United States" within the meaning of section 37 of the Criminal Code.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

NOVEMBER, 1916.



INDEX.

	Page.
STATEMENT OF FACTS	1-5
Rhode Island indictments.....	2-3
West Virginia indictments.....	3-4
The Statutes.....	4-5
ARGUMENT	5-31
Meaning of Sec. 37, Penal Code.....	5-18
Covers violation of any right by deceit.....	5
Bribery is a deceit.....	5
The Right of the United States.....	5-11
Every right derived from Constitution alone.....	5
Statutes do not create: they merely declare rights.....	6
Choice of persons to accomplish a matter of national concern only, save as to Senators.....	6
Examples: Presidential Electors, Senators and Representatives.....	6-7
State machinery for selection already pro- vided.....	7
Its use for convenience, did not change nature of right for which used.....	7-9
Consequences if United States powerless to compel fair elections.....	9-10
The right to do so inheres in the structure of government.....	10
Its sequence is the right to have suffrage rights of its citizens unhindered.....	10
Hence its power to pass Sec. 19, Penal Code.....	10-11
Governmental right and that of citizen are clearly related.....	11
Citizen may protect his own right.....	11
Government may also protect, if interference a matter of public concern.....	11
Citizen's suffrage right is to have vote legally effective in every way.....	12

ARGUMENT—Continued.

Page.

Governmental right and that of citizen are clearly related—Continued.

And so have vote unaffected by other bribed votes	12
State elections conform to Congressionally fixed day	13
Congress could provide entire separate machinery and regulate its own elections...	13
Identity of date and machinery does not impair Congress' powers	14
Failure to exercise does not prove lack of power	14
Right to vote for Congressman does not depend on State law	15
If it did, there would still be right in Federal Government to have election fair	15
Fraud as objectionable as force since produces same illegal result	15
If citizen has the right, the Nation—the mass of citizens—must have it	16
Citizen's right springs from his membership in Nation	16
Therefore, Sec. 37 is violated by the fraud on the United States	17
Arguments contra unsound	17-18
A. Right protected is not limited to <i>operation</i> but includes organization	17-18
B. That House judges qualification of members does not impair governmental power to protect rights invaded in course of selecting members	18
Right to a fair election a different right	18
Rights of United States and its citizens may be affected by things done at primaries	19-31
State decisions cited by court below not in point	19

III

ARGUMENT—Continued.

Page.

Right of United States and its citizens may be affected
by things done at primaries—Continued.

Judge Booth's decision not persuasive.... 19

But Judge Booth and court below here, each
took too narrow a view..... 20

The necessary effect on general election of
acts done in primaries..... 20-22

Constitution did not refer to primary elec-
tions because they were then unknown.. 22

Right is to prevent any step in any way
leading to corrupt results in elections... 22

This justifies control both before and after
the mere balloting..... 23

West Virginia statutes apply to Federal
Senators..... 24

United States has a right to honest operation
of all state election machinery so far as
affects Federal positions..... 25-27

Else it may be debauched through corrupt
manipulation of that machinery..... 26-27

Act of Congress of June 4, 1914 (38 Stat. 384)
adopts State primary law for Senatorial
election purposes..... 27

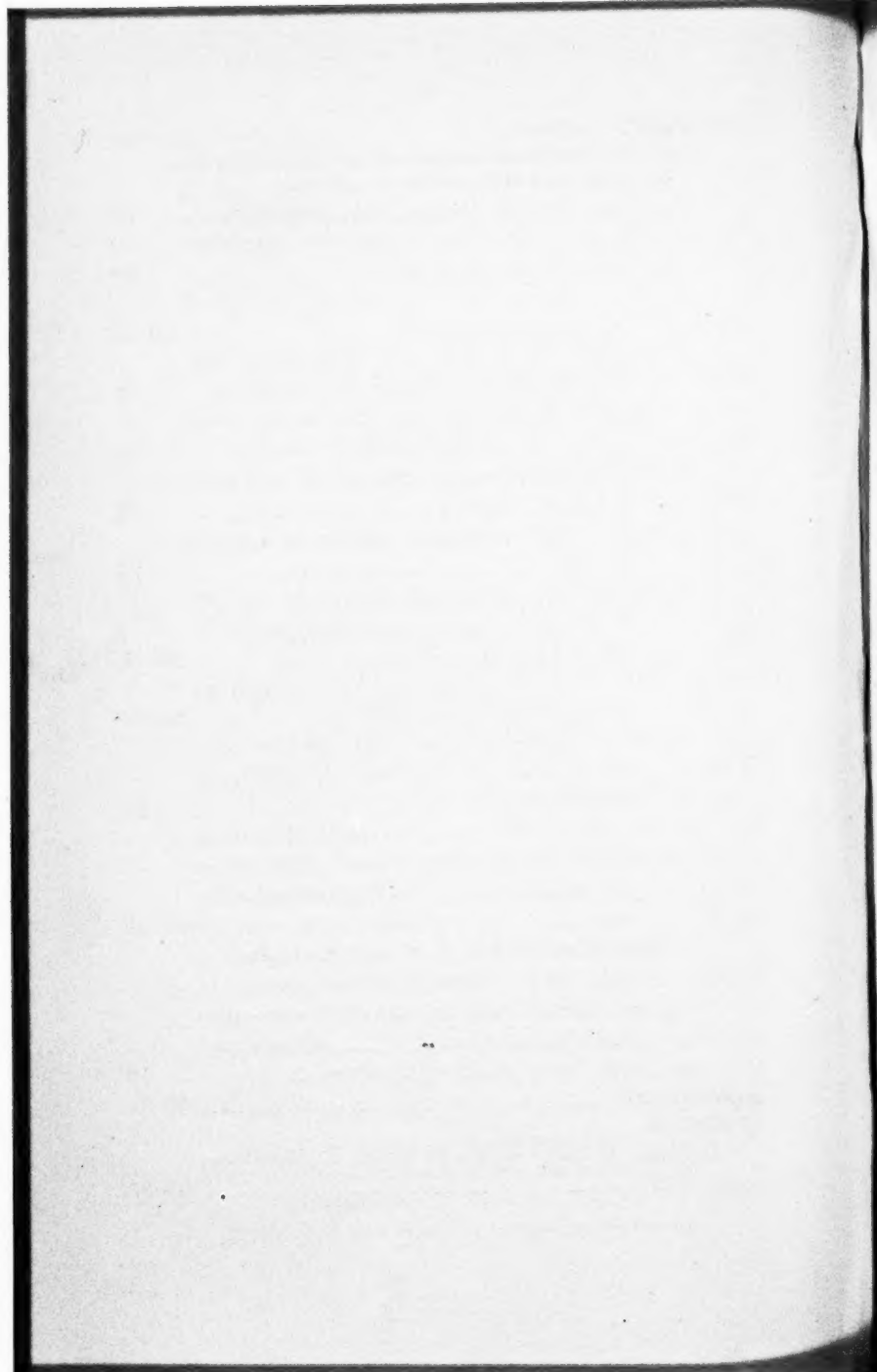
Act of June 25, 1910, as amended in 1911
and 1912, recognizes State primaries as
part of machinery in Congressional elec-
tions..... 28, 29

Later State laws do not render Act of June 4,
1914, inoperative—merely a change in
machinery which the Act of Congress pro-
vided for; later laws in effect, adopted and
have force of Act of Congress..... 29

CONCLUSION..... 30-31

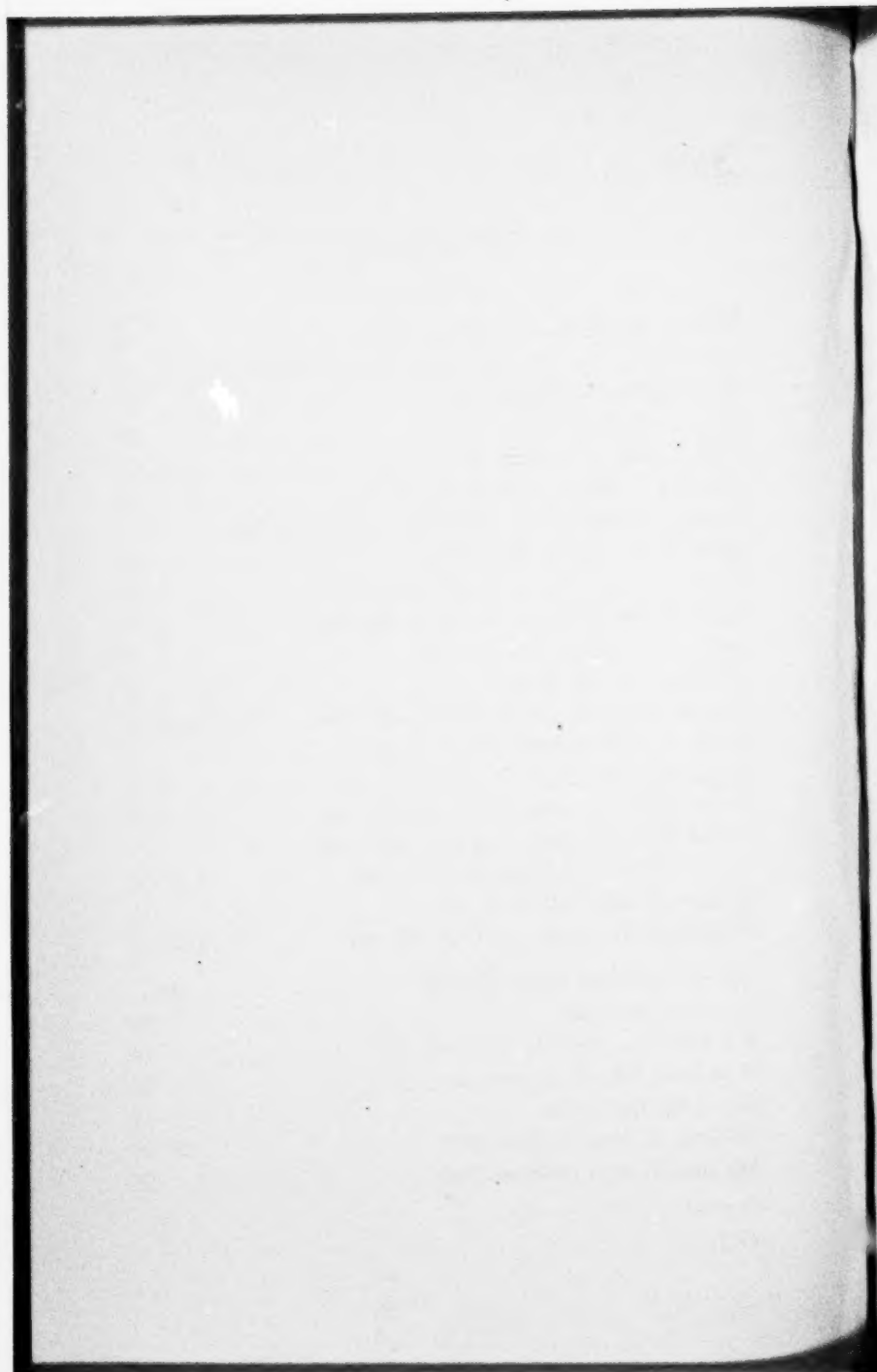
APPENDIX:

Decision of Judge Booth in *Elliott v. Thompson*,
et al..... 32-37



CITATIONS.

	Page.
<i>Aczel v. United States</i> , 232 Fed. 652	16
<i>Caminetti et al. v. United States</i> , Jan. 15, 1917	17
<i>Com. v. Hoxey</i> , 16 Mass. 385	27
<i>Com. v. McHale</i> , 97 Pa. 39	20
<i>Com. v. Silsbee</i> , 9 Mass. 417	15, 27
<i>Crandall v. Nevada</i> , 6 Wall. 35, 43, 44	16
<i>Curley v. United States</i> , 130 Fed. 1, 195 U. S. 628	5
<i>Elliott v. Thompson</i> , Appendix	19
<i>Haas v. Henkel</i> , 216 U. S. 462, 479	5, 18
<i>Logan v. United States</i> , 144 U. S. 263, 294	6, 12
<i>McKenzie v. Hare</i> , 239 U. S. 299	17
<i>Neagle, In re</i> , 135 U. S. 1	6
<i>Siebold, Ex parte</i> , 100 U. S. 371, 388, 389	8, 18, 29
<i>Swafford v. Templeton</i> , 185 U. S. 487	11
<i>United States v. Aczel</i> , 219 Fed. 917, 938	5, 18
<i>United States v. Keitel</i> , 211 U. S. 370, 393	5, 18
<i>United States v. Morse</i> , 161 Fed. 429, 436	5
<i>United States v. Moseley</i> , 238 U. S. 383	12, 17, 18
<i>Wiley v. Sinkler</i> , 179 U. S. 58	11
<i>Yarbrough, Ex parte</i> , 110 U. S. 651, 663	6, 12, 26, 29
<i>Bryce's American Commonwealth</i>	20, 21
<i>Act West Va.</i> , 1891	24
<i>Act West Va.</i> , Feb. 20, 1915, ch. 26	24
<i>Code West Va.</i> , ch. 3, Sect. 48	25
<i>Sect. 1980 Rev. Stat.</i>	11
<i>Act Aug. 4, 1911</i> (37 Stat. 25)	27, 28
<i>Act June 4, 1914</i> (38 Stat. 384)	27



In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES, PLAINTIFF IN ERROR, v. MATHEW T. GRADWELL ET AL.	} No. 683.
---	------------

THE UNITED STATES, PLAINTIFF IN ERROR, v. CHARLES HAMBLY ET AL.	} No. 684.
---	------------

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND.*

THE UNITED STATES, PLAINTIFF IN ERROR, v. EDWARD O'TOOLE ET AL.	} No. 775.
---	------------

THE UNITED STATES, PLAINTIFF IN ERROR, v. EDWARD O'TOOLE ET AL.	} No. 776.
---	------------

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA.*

BRIEF FOR THE UNITED STATES.

STATEMENT.

No. 683, the Gradwell case, and No. 684, the Hambly case, will be distinguished as the Rhode Island indictments, and Nos. 775 and 776, the O'Toole cases, as the West Virginia indictments.

THE RHODE ISLAND INDICTMENTS.

These relate to an election at which a Congressman was being voted for and are based solely on violations of section 37, Penal Code.

The *Hambly* case consists of one indictment containing 11 lengthy counts. For present purposes it is only necessary to consider the first and third. The first count charges a conspiracy to defraud the United States by paying a large number of voters, qualified to vote for a Representative in Congress, a sum of money to vote for a candidate for Representative, namely, one Burchard, without reference to whether Burchard was their choice for the office, the laws of Rhode Island prohibiting such payments. The third count charges the conspiracy to be to procure for Burchard the annual statutory salary of \$7,500 by bribing persons to vote for him as aforesaid.

The *Gradwell* case (No. 683) consists of one indictment with two counts. While it alleges bribery at an election where Representatives in Congress were being voted for, it is vague as to the connection between this bribery and the election of the Representative; although the first count (Rec., No. 683, p. 4) distinctly alleges that the defendants conspired to bribe a number of persons to vote for a Representative in Congress. This vagueness led the lower court to conclude that the indictment in the *Gradwell* case was insufficient (Rec., No. 683, pp. 48-50; 234 Fed., pp. 446, 453, 454). The point, however, is immaterial here because, while the lower court crit-

icized the Gradwell indictment, it nevertheless also held that, even if it had squarely alleged that the bribery was directed at the election of a Representative, it would not state an offense under section 37, Penal Code. Under such circumstances this court will only consider the question of construction.

The court sustained demurrers to both these indictments (Rec., No. 684, pp. 97-106; No. 683, pp. 42-50; 234 Fed. 446, 454), on the ground that bribery at a congressional election is not within section 37, Penal Code, because (a) Congress could not have intended by that section to cover rights of the United States in regard to the *organization* of the Government, as distinguished from its operations after organization, and (b) the Constitution makes each House the judge of the elections, returns, and qualifications of its own members.

THE WEST VIRGINIA INDICTMENTS.

Of these, No. 775 is based on section 37 and No. 776 on section 19—both dealing with illegal voting at a primary conducted under the laws of West Virginia for the selection of a candidate for United States Senator. The former charges a conspiracy to defraud the United States by voting unqualified persons and repeaters for one particular candidate so as to secure his nomination *and election*; the latter charges a conspiracy to injure the rights of citizens of the United States contrary to section 19 of the Penal Code, the citizens being the other candidates for Senator at the primary. In other respects it is the

same as in No. 775, except that it does not charge the conspiracy to have been directed at the election as well as at the primary.

Demurrers were sustained to both indictments, the court holding (Rec., 775, p. 8) that a nomination by a political party, whether by caucus, convention, or primary, is nothing more than an indorsement and recommendation of the nominees to the suffrage of the electors; that neither the United States nor a citizen thereof has any right in respect to it under the Constitution; and that in passing statutes regulating primary elections the State merely recognizes the indorsement and provides conditions upon which it may be received, without giving the United States, or a citizen thereof, any right which they did not have before.

STATUTES.

SECTION 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, * * * each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

SECTION 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, * * * they shall be fined not more than five thousand dollars and impris-

oned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

ARGUMENT.

THE MEANING OF SECTION 37, PENAL CODE.

Regardless of the common-law meaning of "to defraud," it is settled that the addition of the words "in any manner or for any purpose" has caused the combined statutory phrase to denote the violations of *any* right by artifice or deceit. This is especially true when the possessors of the right are the people of the United States in their political capacity. *United States v. Keitel*, 211 U. S. 370, 393; *Haas v. Henkel*, 216 U. S. 462, 479; *Curley v. United States*, 130 Fed. 1, (petition for writ of certiorari denied, 195 U. S. 628); *United States v. Morse*, 161 Fed. 429, 436; *United States v. Aczel*, 219 Fed. 917, 938.

It can not be denied that bribery is an artifice or deceit. The only question, therefore, is whether the United States has a *right*, within the meaning of section 37, Penal Code, to have congressional elections conducted free from bribery.

THE RIGHT OF THE UNITED STATES.

Because there is no residuum of undelegated power in the Federal Government, its every right must be derived from the Constitution. Though they may declare rights previously existing, and fix penalties for their violation, or procedure for their enforcement,

Federal statutes can not create any new governmental rights. *In re Neagle*, 135 U. S. 1; *Logan v. United States*, 144 U. S. 263, 294; *Ex parte Yarbrough*, 110 U. S. 651, 663. So also, while within its rights it has almost unlimited activity, nevertheless the rights themselves are limited.

In considering these rights as they bear on the present case, a distinction should be made. In the compromise between the States and the future Federal Government as to the *powers* to be granted the latter or retained by the former, save in one instance—the number of Senators, as to which the compromise secured an equal representation from each State—the question of the persons who should exercise the Federal powers, and the manner of their choice was dealt with as a matter of national rather than of State concern.

For example, in the matter of electing the President, there resulted a college of wise men, who were to meet in each State and ballot for the best man, thus creating a buffer between the Presidency and the electorate at large. These electors were to be chosen as the State legislature should direct, and were to be equal in number to the Senators and Representatives from each State. The States, however, had no direct interest in this procedure; and the convention, in prescribing it, was acting nationally as representatives of the people of the United States.

Take next the Senators. They were to be chosen by the legislatures of the States, which also were to

prescribe the time, place, and manner of holding the elections—though Congress might alter such regulations except as to place. The State legislatures were chosen as a medium of election from conservative motives, because it resembled a council of elders. It was intended, not to make the matter one of State rights, but to adopt State machinery to carry out ideas which were national in their nature and scope. And the reservation of power in Congress to alter the regulations as to time and manner is additional evidence of such a purpose.

The case of Representatives is still clearer. They are chosen by electors having the qualifications requisite for electors of the most numerous branch of the State legislature, and the time, place, and manner of their election is to be prescribed by the States, but Congress may at any time alter such regulations. The right involved is clearly a national one.

It must be remembered that when the Constitution was framed and put in operation the 13 States had for many years had stable governments in full operation with laws and usages, especially governing the choice of officers. The Federal Government was an experiment. It would have been unwise and even impossible to have then established completely independent Federal machinery for the enforcement of all Federal rights. Especially was this so as to elections. The State machinery stood ready at hand. But in using it they did so *to enforce a Federal right*, not to confer local power upon the States.

In *Ex parte Siebold* (100 U. S. 371, 388, 389) this court said:

* * * It is the duty of the States to elect Representatives to Congress. The due and fair election of these Representatives is of vital importance to the United States. The Government of the United States is no less concerned in the transaction than the State government is. It certainly is not bound to stand by as a passive spectator, when duties are violated and outrageous frauds are committed. It is directly interested in the faithful performance, by the officers of election, of their respective duties. Those duties are owed as well to the United States as to the State. This necessarily follows from the mixed character of the transaction,—State and National. A violation of duty is an offense against the United States, for which the offender is justly amenable to that Government. No official position can shelter him from this responsibility. In view of the fact that Congress has plenary and paramount jurisdiction over the whole subject, it seems almost absurd to say that an officer who receives or has custody of the ballots given for a representative owes no duty to the national government which Congress can enforce; or that an officer who stuffs the ballot box can not be made amenable to the United States. If Congress has not, prior to the passage of the present laws, imposed any penalties to prevent and punish frauds and violations of duty committed by officers of election, it has been because the exigency has

not been deemed sufficient to require it, and not because Congress had not the requisite power.

The objection that the laws and regulations, the violation of which is made punishable by the acts of Congress, are State laws and have not been adopted by Congress, is no sufficient answer to the power of Congress to impose punishment. It is true that Congress has not deemed it necessary to interfere with the duties of the ordinary officers of election, but has been content to leave them as prescribed by State laws. It has only created additional sanctions for their performance, and provided means of supervision in order more effectually to secure such performance. The imposition of punishment implies a prohibition of the act punished. *The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress. It simply demands their fulfillment.* Content to leave the laws as they are, it is not content with the means provided for their enforcement. It provides additional means for that purpose; and we think it is entirely within its constitutional power to do so. It is simply the exercise of the power to make additional regulations.

Test these principles by proper examples. Is it conceivable that the people of the United States have no right under the Constitution to the fair election of presidential electors, when the fraudulent election of one single elector might cause a civil war? Were the people of the United States condemned to sit by and

see the more powerful of the two branches of the National Legislature fatally corrupted by the bribery of State legislatures by wealthy senatorial candidates? Did the people of the United States have no right to the fair election to Congress of the men who under the Constitution had power to pass laws affecting all the people, and affecting them more extensively and intimately as the Nation progressed in strength and civilization?

These questions have been often answered by this court. The Federal Government was not deprived of rights necessary to its very existence. The Constitution is not a contract or a code. It is the skeleton of an operative national government. Flesh must be put upon the bones. Lacking the declaration of the rights of man contained in many constitutions, it need not specify precisely the rights of the United States. Those rights implied in the very structure of a national government are granted, as though they had been specified, and among them none is more clear or important than the right of the United States to the fair election of those persons who administer its Government.

A sequence of this constitutional right to have fair elections is the right in it to have *its citizens* free from injury, oppression, threat, or intimidation in the free exercise or enjoyment of their right of suffrage. From it springs the power of Congress to pass section 19, Penal Code. That act does not undertake (as it might have done) to punish an injury committed by a single person without concert with another, though

it reaches far beyond mere suffrage rights of the citizen. Under it a plan to injure one citizen in the manner indicated, though born merely of ill will toward that individual, is punishable. None the less is the power to pass it found in the right of the Government to secure the constitutional rights of its citizens, including therein their suffrage privileges.

The close connection between these rights of the citizen and of the United States under the Constitution is shown by an analysis of section 19. Generally when personal rights are violated, the State merely furnishes courts and sheriffs, which the injured person may or may not use to vindicate his rights. In some cases, however, the violation of his rights concerns the whole or a considerable portion of the State, thus creating a right in the latter which is entirely distinct from the private right, and may be enforced by the State in its sovereign capacity. Thus a citizen of the United States has a right under the Constitution in connection with elections for Representatives, etc. *Moseley's case*, 238 U. S. 383. This right he can enforce himself by either mandamus, injunction, or action for damages, as he successfully did in *Wiley v. Sinkler*, 179 U. S. 58, and *Swafford v. Templeton*, 185 U. S. 487, and as subdivision 3 of section 1980, R. S., expressly provides. Section 19 did not declare this right or provide for enforcing it. It declared a right of the United States, delimiting it by reference to the right of the citizen, and provided a punishment for its violation. This declared right of the United States is that there shall

be no conspiracy to injure the right of a citizen (under the Constitution) in regard to elections. Thus Congress has indicated how closely connected are these rights of the United States and of the citizen. See *Logan v. United States*, 144 U. S. 263, 294, 295.

There is little doubt but that a citizen of the United States has a right guaranteed by the Constitution to free, fair elections, which right is protected by section 19. In the Moseley case, *supra*, a conspiracy to prevent the counting of the vote of a citizen of the United States was charged. This court held such a conspiracy within the statute, saying (238 U. S. 386):

* * * It is not open to question that this statute is constitutional, and constitutionally extends some protection at least to the right to vote for Members of Congress. *Ex parte Yarbrough*, 110 U. S. 651; *Logan v. United States*, 144 U. S. 263, 293. We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.

The proper inference is that the right is not confined to casting the ballot and having it counted. There is a right that the vote shall have its proper weight and be placed in competition with those votes only which are fairly and rightfully cast. How would it benefit a citizen to have his vote cast and counted if its potency was entirely destroyed by bribery, fraud, and intimidation of other voters? Why should the right recognized in Moseley's case not be extended to the much more serious and subtle offenses of bribery and fraud? In *Ex parte Yarbrough*, 110 U. S. 652, a

leading case relied on in *Moseley's* case, and in which section 5508, R. S., the forerunner of section 19, Penal Code, was under consideration, the court said (pp. 661, 662, 663):

Now the day fixed for electing Members of Congress has been established by Congress without regard to the time set for election of State officers in each State, and but for the fact that the State legislatures have, for their own accommodation, required State elections to be held at the same time, these elections would be held for congressmen alone at the time fixed by the act of Congress.

Will it be denied that it is in the power of that body to provide laws for the proper conduct of those elections? To provide, if necessary, the officers who shall conduct them and make return of the result? And especially to provide, in an election held under its own authority, for security of life and limb to the voter while in the exercise of this function? Can it be doubted that Congress can by law protect the act of voting, the place where it is done, and the man who votes, from personal violence or intimidation and *the election itself from corruption and fraud?*

If this be so, and it is not doubted, are such powers annulled because an election for State officers is held at the same time and place? Is it any less important that the election of members of Congress should be the free choice of all the electors because State officers are to be elected at the same time? *Ex parte Siebold*, 100 U. S. 371.

These questions answer themselves; and it is only because the Congress of the United States, through long habit and long years of forbearance has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted.

But when, in the pursuance of a new demand for action, that body, as it did in the cases just enumerated, finds it necessary to make additional laws for the free, the pure, and the safe exercise of this right of voting, they stand upon the same ground and are to be upheld for the same reasons.

It is said that the parties assaulted in these cases are not officers of the United States, and their protection in exercising the right to vote by Congress does not stand on the same ground.

But the distinction is not well taken. The power in either case arises out of the circumstance that the function in which the party is engaged or the right which he is about to exercise is dependent on the laws of the United States.

In both cases it is the duty of that Government to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing. This duty does not arise solely from the interest of the party concerned, but from the necessity of the Government itself, that its service shall be free from the adverse influence of force and fraud practiced on its agents, and that the votes by which its members of Congress and its President are elected shall be the *free* votes

of the electors, and the officers thus chosen the free and uncorrupted choice of those who have the right to take part in that choice.

This proposition answers also another objection to the constitutionality of the laws under consideration, namely, that the right to vote for a member of Congress is not dependent upon the Constitution or laws of the United States, but is governed by the law of each State respectively.

If this were conceded, the importance to the general government of having the actual election—the voting for those members—free from force and fraud is not diminished by the circumstance that the qualification of the voter is determined by the law of the State where he votes. It equally affects the Government, it is as indispensable to the proper discharge of the great function of legislating for that Government, that those who are to control this legislation shall not owe their election to bribery or violence, whether the class of persons who shall vote is determined by the law of the State, or by law of the United States, or by their united result.

Here is a clear statement by a great judge that fraud is as objectionable as force, and that there must be a free election of freemen. Similarly, in *Com. v. Silsbee*, 9 Mass. 417, 418, it was held that “repeating” at a town meeting was an offense at common law. The court said:

In town meetings, every qualified voter has equal rights, and is entitled to give one vote for every officer to be elected. *The person who*

gives more infringes and violates the rights of the other voters, and for this offense the common law gives the indictment.

The point also seems to be favorably ruled by the Circuit Court of Appeals for the Seventh Circuit in *Aczel v. United States*, 232 Fed. 652.

We confidently claim, therefore, that a citizen of the United States has a right guaranteed by the Constitution to elections free from bribery, fraud, and intimidation, in so far as they affect Federal officials.

That being so, is it possible that the United States has not at least as great a right under the Constitution? The citizen obtains his right merely because he is a *member* of a great political community, and as such vitally interested in the honest election of those who administer its affairs. Is it possible that the *community itself* has not a corresponding right? That a citizen can derive something from membership in a body which itself has nothing? The great case of *Crandall v. Nevada*, 6 Wall. 35, 43, 44, is illuminating on this point. There it was held that the United States had a right under the Constitution to call its citizens to its service at any point it needed them, and that a tax by a State on persons traveling from the State would violate this right. The court said (p. 44):

But if the Government has these rights on her own account, *the citizen also has correlative rights*. He has the right to come to the seat of government, etc.

In that case the rights were essentially reciprocal. In the present case they are cumulative; i. e., if each citizen has the right, then the body of the people has the cumulative right. It is confidently submitted that if a citizen has a right under the Constitution to free, fair elections for Representatives, etc. (as we have shown he has), the United States has a coextensive right *under the Constitution*.

Because of this, and because section 37, Penal Code, punishes a conspiracy to violate *any* right of the United States by artifice or deceit, a conspiracy to violate this right by fraud would fall within the section. What reason is there against this conclusion? The lower court states two, namely:

1. That section 37, Penal Code, was never meant to cover such a right, but only the right of the United States to the proper operation of the organized Government; that if Congress had intended to protect the right of the United States in elections it would have said so; instead it has repealed the laws passed in 1870, specifically regulating Federal elections.

This argument has been repudiated by this court in such cases as *McKenzie v. Hare*, 239 U. S. 299, and the recent "White-slave" cases (*Caminetti v. United States*, etc., decided Jan. 15, 1917); and it is specifically declared fallacious in *Moseley's* case, 238 U. S. 383. That was a more difficult case than the present, because section 19 had been a part of the enforcement act, most of which had been repealed. Nevertheless it was held that its language, being general, must have full scope, and therefore the right of a citizen under

the Constitution extended to elections for Representatives, conducted under State laws. The argument of the court below would apply in every respect to section 19 just as much as to section 37. Indeed, it would have more force as to section 19, for the reason stated above, while section 37, though originally part of a revenue act, was carried into the Revised Statutes as part of the chapter "Crimes against the operations of the Government" and the words "for any purpose" were added. Though *United States v. Keitel*, 211 U. S. 370, and *Haas v. Henkel*, 216 U. S. 462, dealt with the right of the United States to have the Government properly administered, there is not a word in either of those opinions restricting the rights of the United States under section 37 to any particular kind of a case.

2. That the Constitution makes each House the exclusive judge of the elections, returns, and qualifications of its own Members, and this is the only remedy given by the Constitution.

In answer it is enough to say that the right of the United States to have those who legislate for and administer the Government fairly elected is distinct from the right of Congress to judge of its own membership. These rights do not conflict. They may, and in fact do, exist together *Ex parte Siebold*, 100 U. S. 371, 389. This argument also is disposed of by *Moseley's case*, *supra*, since it was just as available in that case as in this.

On all this matter the court's attention is invited to Judge Anderson's opinion in *United States v. Aczel*, 219 Fed. 917, 934-938.

THE SENATORIAL PRIMARY.

This question is presented by the West Virginia indictments. As has been stated, the indictment in No. 775 alleged that the conspiracy was directed at the general election as well as at the primary, while the indictment in No. 776 confined itself to the primary. The lower court made no distinction between the two cases, holding that a primary election, even when regulated by State law, was but an indorsement by a voluntary political association of a person for the suffrages of the people; and that neither a citizen of the United States, nor the United States itself, could have any right in regard to it (Rec., No. 776, p. 9). It cites certain State cases as authority. Examination shows that they only decide that certain provisions of the Constitution of the particular State had no application to a primary election—as indeed in the nature of things they could not have had. These decisions have no application to the present case. He also relies upon a decision by Judge Booth in the District Court for the Western District of Missouri in *Elliott v. Thompson*. Because it is not reported, we print it as an appendix to this brief. It neither supports nor adds anything essential to the reasoning of the court below in this case, and was a civil action for damages for refusal to allow plaintiff to vote at a primary. There was no direct allegation of a conspiracy by the defendants to interfere with the plaintiff's voting

at a general election, using the primary merely as a means thereto, as there was in case at bar, No. 775.

Both opinions fail to grasp the actual situation, as known to every layman. It is more becoming to treat the subject in the spirit of the Supreme Court of Pennsylvania in *Com. v. McHale*, 97 Pa. 39, 397, 410, where they held that bribery at an election was a misdemeanor at common law. The court said:

The test is not whether precedents can be found in the books, but whether they injuriously affect the public police and economy. * * * They are not only offenses which affect public society, but they affect it in the gravest manner. An offense against the freedom and purity of elections is a crime against the Nation. It strikes at the foundation of republican institutions. * * * The ingenuity of politicians is such that offenses against the purity of elections are constantly liable to occur which are not specifically covered by statute. It would be a reproach to the law were it powerless to punish them.

The actual condition which has long existed is described by Lord Bryce in *The American Commonwealth*, volume 11, Chapters LX, "The machine" (with a note on recent primary legislation); LXI, "What the machine has to do"; LXII, "How the machine works"; and LXIII, "Rings and bosses." These chapters may be summed up thus—that corrupt manipulation of primaries and conventions is the corner stone of an electoral system which has been

and still is a disgrace to this country. Prof. Beard is quoted as saying (edition 1910, p. 95):

And, as everybody knows, whoever controls the primaries controls the strategic point in our whole election system.

Lord Bryce himself says (p. 105):

There are two stages in an election campaign. The first is to nominate the candidates you desire; the second to carry them at the polls. The first of these is often the more important, because in many cities the party majority inclines so decidedly one way or the other (e. g., most districts of New York City are steadily Democratic, while Philadelphia is Republican), that nomination is in the case of the dominant party equivalent to election. Now to nominate your candidates you must, above all things, secure the primaries. They require and deserve unsparing exertion, for everything turns upon them.

After describing the primaries and conventions he says (p. 109):

The above may be thought, as it is thought by many Americans, a travesty of popular choice. Observing the form of consulting the voters, it substantially ignores them, and forces on them persons whom they do not know, and would dislike if they knew them. It substitutes for the party voters generally a small number of professionals and their creatures, extracts prearranged nominations from packed meetings, and calls this consulting the pleasure of the sovereign people.

These statements are confirmed by the common knowledge. If one man controlled the nomination of *every* candidate for office, he would be an absolute ruler, let the elections be as free as you choose. Fraud at a primary or convention, because more subtle and more difficult to overcome, may be more effectual in preventing a free choice of officers than fraud at an election.

This being the connection between primaries and conventions on the one side and free, honest elections on the other, the statement of the court below that neither a citizen of the United States nor the United States itself has any rights in regard thereto is startling indeed. The only reason given by the court is that the Constitution only refers to elections and not to primaries, caucuses, or conventions. But the latter were not known at the time it was adopted. As has been stated, the Constitution is not a code. The right of a citizen *and* of the United States to fair, honest election of Federal officials is not derived by verbal interpretation from particular language relating to the choosing of Representatives and Senators. It arises from the structure and essence of a National Government in actual operation. Unless those who make and administer its laws are chosen honestly, the whole Government is corrupted at its source; and unless there is a right under the Constitution in the citizen, and in the United States itself, to have that choice—including everything actually affecting it—kept free from corruption, the

Government is admittedly helpless to carry out the great purposes for which it was constituted.

Nor does such right stop at the election itself. Just as it forbids any action which will prevent the voter from going to the polls, so there is no reason why it should not extend to such preliminary matters as primaries at which the candidates to be voted for are selected. The very idea of an election connotes candidates, and candidates necessarily connote some method of selection. The right to free and pure elections includes, therefore, a right to the free, pure conduct of everything which the term "elections" connotes, *e. g.*, the nomination, choosing, or selection of candidates thereat. It is beside the purpose to say that Congress may legislate so as to punish fraud at primaries, because Congress can not legislate unless there is already a right under the Constitution, and if there be such a right, Congress has already legislated in regard to it in sections 19 and 37.

These considerations are especially strong whenever it is specifically alleged, as in No. 775, that the conspiracy was to *elect*, as well as to nominate, a certain person by fraud. The primary is charged as an essential means by which the end of the conspiracy—the election of a certain person—was to be attained. The connection between the primary and the general election, which is an irresistible inference in No. 776, is, in No. 775, made matter of direct allegation, the truth of which is admitted by the demurrer. Therefore, the indictment in No. 775 stands

apart as directly charging a conspiracy to affect a general election by fraud.

In addition, West Virginia, following the act of 1891, p. 175 (Code 1913, ch. 3, sec. 34-54), which was not broad enough, enacted the comprehensive act of February 20, 1915, ch. 26, act of 1915, p. 222. This act, by section 1, provided that "all candidates of political parties to be voted for by the people" "shall be nominated at a direct primary election held in accordance with this act." As this act was passed after the adoption of the Seventeenth Amendment, it applies to Senators of the United States. This is also shown by its title, by the express provision of section 12 that the official primary ballot shall contain the names of candidates for United States Senator, and by the sample ballot given in said section. After making elaborate provision for the manner of conducting the election, the qualifications of those who vote thereat, the manner of voting, and of counting and certifying the result, section 25 provides that—

Any voter who shall cast more than one primary election ballot on the same day, or who shall vote under a name other than that by which he is generally known, who shall make any false oath, affirmation, or affidavit respecting the right of himself or any other person to vote, shall be guilty of a felony.

In addition section 24 provides that the provisions of chapter 3 of the code, so far as they are not in conflict with the act or modified by it are made

applicable to the primary elections. Section 48 of chapter 3 provides that—

Whoever shall vote at a primary election not being a legal voter, or whoever shall vote or attempt to vote upon any name not his own, or whoever shall vote or attempt to vote more than once, or whoever shall use or receive any money or other thing of value to influence any vote, or whoever shall cast any vote after having received money or other thing of value in consideration of such vote shall be guilty of a misdemeanor.

Clearly the charges in the West Virginia indictments would, if committed, have constituted an offense against the primary laws of the State, since persons would have voted who were not qualified to vote ("floaters"), and others would have voted twice ("repeaters").

Here then is machinery provided by the State for primary elections and specifically made applicable to Senators and Representatives in Congress. It conforms as near as conditions permit to the procedure in general elections, and punishes in a similar manner and to a somewhat similar extent frauds committed at primaries. Undoubtedly it confers upon the people of West Virginia a right to fair, honest primary elections. If citizens of the United States, and the United States itself, have a right under the Constitution of the United States to a fair, honest election for Senators and Representatives, and if primaries have the close relation to general elections which the considerations urged above seem to

indicate, is it not a rational, if not necessary, conclusion, that the right extends to a fair, honest primary in accordance with the State laws?

Though perhaps no decision of this court has squarely so decided, we assert that, in general elections, the citizen and the United States have a right to the honest operation of the machinery provided by State laws, in so far as it relates to Federal officials. This is so because the United States has adopted this machinery as its own for this purpose, having thought it sufficient up to the present time to have its rights and the rights of its citizens expressed through State laws. At any rate, this must be certainly true of such essentially corrupt acts as bribery, illegal voting, and repeating at an election.

In *Ex parte Yarbrough*, *supra*, this court concluded its opinion as follows:

If the recurrence of such acts as these prisoners stand convicted of are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety.

If the Government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its high-

est purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other.

If these broad principles are to be applied to varying conditions to attain the desired end, let those conditions be as novel or complex as may be (just as in *Com. v. Silsbee*, 9 Mass. 417, and *Com. v. Hoxey*, 16 Mass. 385, the court applied the common law to frauds and misconduct at town meetings, though that law knew nothing of such meetings), then the United States and its citizens have, ex necessitate, by reason of the actual operation of the Federal Government under the Constitution, a right to fair, honest primary elections for Senators and Representatives in Congress and have a right to the honest operation of the State machinery furnished for that purpose.

Moreover, after the adoption of the Seventeenth Amendment, which created a right in the United States to have Senators elected by popular vote, Congress passed the act of June 4, 1914, 38 Stat. 384, which provided:

That at the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the fourth day of March next thereafter.

SEC. 2. That in any State wherein a United States Senator is hereafter to be elected either at a general election or at any special election called by the executive authority thereof to fill a vacancy, until or unless otherwise specially provided by the legislature thereof, the nomination of candidates for such office not heretofore made shall be made, the election to fill the same conducted, and the result thereof determined as near as may be in accordance with the laws of such State regulating the nomination of candidates for and election of Members at Large of the National House of Representatives: *Provided*, That in case no provision is made in any State for the nomination or election of Representatives at Large, the procedure shall be in accordance with the laws of such State respecting the ordinary executive and administrative officers thereof who are elected by the vote of the people of the entire State: *And provided further*, That in any case the candidate for Senator receiving the highest number of votes shall be deemed elected.

SEC. 3. That section two of this act shall expire by limitation at the end of three years from the date of its approval.

This act declared a right of the United States and of its citizens in the nomination, in the machinery for nomination, of United States Senators, thus confirming the view that such a right existed under the Constitution. What was the extent of this right? Since West Virginia, by the act of 1915 above referred to, specially provided for the nomination of United

States Senators, the lower court held (Rec. 776, p. 11) that the act of June 4, 1914, had no longer any application, because its provisions—

show a distinct purpose by Congress to relinquish all control and leave to the States absolute authority over the selection of party candidates for the United States Senate as soon as they had actually passed laws on the subject.

This is too narrow a view, and is conceived in the spirit exorcised by this court in *Ex parte Siebold* and *Ex parte Yarbrough*. The meaning of the act of June 4, 1914, is that, until the legislature of the State specially provides, nominations for Senators shall be made as near as may be in accordance with the State law regulating the nomination of candidates for Members at large of the House of Representatives. *When, however, the State does enact laws specially regulating the nomination of Senators, such nominations shall be made in accordance with such laws.* This is so, because the act expressly adopts *the State laws* regulating the nomination of Congressmen at large as the standard for nomination of Senators, until the State acts specially on the matter, and evidently intended such special statutes when enacted to be substituted as the Federal standard in place of the one temporarily adopted. As said in *Ex parte Siebold* (p. 388):

The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress.

This view is confirmed by the Corrupt Practice Act of June 25, 1910, 36 Stat. 822, as amended by the act of August 19, 1911, 37 Stat. 25, which prohibits the expenditure by a candidate for Senator in connection with a primary of a greater amount than is allowed by the law of the State, and punishes by fine or imprisonment any violation of its provisions. There is no reason to suppose that Congress meant to declare a right of the United States as to the amount of money spent by a candidate on a primary election, and yet to leave the much more important question of frauds at such an election to be dealt with by State law only.

We claim, therefore, that there is a right of the citizen of the United States, and of the United States itself, under the Constitution, to a fair, honest primary election for a candidate for Senator of the United States from West Virginia, and that these rights are within sections 19 and 37 of the Penal Code, respectively.

CONCLUSION.

Applying these general principles to the four indictments in the cases at bar, the conclusion is as follows:

1. The Hambly indictment, No. 684, charged a plan to bribe electors at the general election to vote for Burchard for Congress regardless of their choice, such bribery being also prohibited by the laws of Rhode Island; and a plan to thereby gain for him the annual salary of \$7,500 paid by the United States to a Congressman.

Here was a plan to defraud the United States (a) of its right to a fair election of the Congressman, and (b) of its money.

2. As to the *Gradwell* case, No. 683, the court first held the indictment fundamentally bad for the reason that section 37 properly construed did not cover bribery of voters to vote for a Representative in Congress, and second held that, even if this were not so, the indictment, as a matter of pleading, did not sufficiently charge such bribery.

Upon the first point the case is the same as the *Hambly* case. Upon the second point, if it be open in this court on this proceeding (we contend that it is not), the Government of course admits that the court's construction of the indictment is final.

3. As to the *O' Toole* cases, No. 775 comes squarely within the application of the law made by us to the Rhode Island indictment No. 684, because if its direct allegation of a conspiracy and purpose to affect the right of a citizen in the general election, while the indictment No. 776 alleges a sufficient interference with the rights of citizens of the United States accruing in connection with a senatorial primary.

The judgments of the courts below in all these cases should therefore be reversed and the cases remanded with instructions to overrule the demurrers.

WM. WALLACE, Jr.,
Assistant Attorney General.

FEBRUARY, 1917.

APPENDIX.

In the United States District Court for the Western Division
of the Western District of Missouri, at Kansas City.

C. P. ELLIOTT, PLAINTIFF,

v.

R. L. THOMPSON, BENJAMIN RAPP, MAX C.
Englehardt, Pat Murphy, H. M. Smith,
J. C. Baird, R. H. Foster, H. C. Hill,
Wm. S. Beebe, Lewis Schaffer, Wm. Con-
lin, C. H. Hersey, Peter Klink et al.,
defendants.

This is an application by plaintiff for a *dedimus potestatem* to take depositions, as provided by Sec. 866 R. S. U. S.

The application is opposed by defendants on the ground that the court has not jurisdiction of the action; on the further ground that the complaint does not state a cause of action; and on the further ground that the application should not be granted, because the granting of it would be contrary to the provisions of the Constitution and Statutes of the State of Missouri.

The action is brought by a citizen of the State of Missouri against defendants who are also citizens of the State of Missouri, for damages alleged to have been sustained by reason of a conspiracy on the part of all of the defendants, and by reason, pursuant thereto, of the refusal by several of the defendants acting as judges and clerks, of a certain primary election held in the city of Kansas City, State of Missouri, on the 4th day of August, 1914, to count the vote of the plaintiff as cast by him for William P. Borland for member of Congress.

Jurisdiction by this court is claimed to exist on the ground that the action is one arising under the Constitution and Laws of the United States; the plaintiff alleging, "That

said defendants herein did procure and cause the plaintiff to be deprived of a right and privilege secured to him by the Constitution and Laws of the United States of voting for a member of Congress for the Fifth Congressional District."

The right of suffrage in general is not a right that is based upon the Constitution and Laws of the United States, nor conferred by Congress upon any one, but is conferred by the several States.

Minor v. Happersett, 21 Wall. 162.

United States v. Reese, 92 U. S. 214.

United States v. Cruikshank, 92 U. S. 544.

The right to vote for members of Congress, however, is based upon the Constitution and Laws of the United States, and Congress may pass laws to protect this right.

Ex parte Yarbrough, 110 U. S. 651.

United States v. Mosley, 237 U. S.

In the exercise of its power to protect this right Congress may adopt and has adopted many of the State laws relating to elections, and has provided punishment for a violation thereof, so far as such violations occur in elections where representatives in Congress are being elected. That the officers of election wherein representatives in Congress are elected, though appointed by the State, yet owe a duty to the United States, is also settled.

Ex parte Siebold, 100 U. S. 371.

Ex parte Clark, 100 U. S. 401.

In re Coy, 127 U. S. 731.

United States v. Aczel, 219 Fed. 917.

Furthermore, in cases of contested elections for representatives in Congress the federal courts have power to issue subpœnas to obtain evidence, and may authorize the taking of evidence before Commissioners.

In re Howell, 119 Fed. 465.

Even where the State Constitution and laws, as in Arkansas, provide for sealing up the ballots, and forbid their being opened, except in cases of contested election, it has been held that such ballots can be ordered produced before federal grand jury, in an investigation for violation of the federal election laws.

In re Massey, 45 Fed. 629.

Furthermore, wrongful interference with the right to vote at an election for a representative in Congress gives rise to a cause of action against the wrong doer, and such cause of action is one arising under the Constitution and laws of the United States.

Wiley v. Sinkler, 179 U. S. 58.

Swafford v. Templeton, 185 U. S. 491.

Knight v. Shelton, 134 Fed. 423.

Brickhouse v. Brooks, 165 Fed. 543.

But, though the foregoing principles appear to be well established, it does not necessarily follow therefrom that the right to participate in a State primary election is a right arising under the Constitution and Laws of the United States, even though representatives in Congress may be nominated at such primary election. And the crucial question in this case is whether, conceding the right to vote at said primary election existed in the plaintiff, and conceding that this right was violated by the defendants, this state of facts gives rise to a cause of action which can be said to be a case arising under the Constitution and Laws of the United States.

A State primary election is not an election within the meaning of that term as used in the State Constitutions and laws. This is the view of the courts in the great majority of the decisions, although there are decisions to the contrary.

State ex rel Taylor, 220 Mo. 619.

State v. Nichols, 50 Wash. 508.

Lodgerwood v. Pitts, 122 Tenn. 570.

State v. Johnson, 87 Minn. 221.

State v. Erickson, 119 Minn. 152.

Brown v. Smallwood (Minn.) 153 N. W. 953 (130 Minn. 492).

Montgomery v. Chelf, 118 Ky. 766.

Gray v. Seitz, 162 Ind. 1.

In *State v. Johnson*, *supra*, the Court said:

"The primary election law simply adopts a general method by which all parties and organizations shall, in the interests of public order, upon a certain day, within certain regulations, meet, and select their various nominees to go upon the ballot for the ensuing election."

And again, in *State v. Erickson*, supra, the court said:

"Our primary election, which is purely of statutory origin, is the selection, by qualified voters, of candidates for the respective offices to be filled, while an election, which has its origin in the Constitution, is the selection, by such voters, of officers to discharge the duties of the respective offices."

The rights of candidates and voters at primary elections are widely different from the rights of candidates and voters at an election proper. Legislation on various points may be passed with reference to rights and procedure under a primary election which would be unconstitutional if applied to an election proper. The right at a primary is not a right to vote to elect, but a right to vote to nominate. In other words, the primary is a mere nominating device. See authorities supra.

It is claimed, however, that Congress has recognized primary elections, and attention is called to the Act of August, 1911, Chap. 32, being U. S. Comp. St. 1913, Sec. 195.

But in my opinion, it does not follow that because Congress has recognized State primary elections for certain purposes that it has adopted all the State laws touching the preliminary machinery of the State primaries, so that such laws become, as to the election of representatives in Congress, laws of the United States.

The case of *Anthony v. Burrow*, 129 Fed. 783, in some respects analogous to the instant case, is instructive. Judge Pollock, after reviewing the cases of *ex parte Yarborough*, *Wiley v. Sinkler*, and *Swafford v. Templeton*, supra, used the following language:

"From this it will be seen the claim made by solicitors for complainant, that the above and kindred cases hold the election machinery employed by the state in the selection of candidates for the office of representative in Congress, becomes, when so employed, a part of the federal law, and the construction of the same raises a federal question, is claiming too much for such cases."

In the case at bar, not even the construction of the State law is involved, but it is contended that the violation of plaintiff's rights under said law constitutes a violation of the plaintiff's rights under the United States Constitution to vote for a representative in Congress, because of a necessary connection between the right under the State law and the right

under the United States Constitution. The claim is plausible, but, in my opinion, is not sound. As above stated, the great weight of authority is to the effect that a primary election is not an election within the meaning of that term as used generally in the State Constitutions; and the same reasoning leads to the conclusion that a primary election is not an election within the meaning of that term as used in the Constitution of the United States, in reference to the election of representatives in Congress.

Nor is the right to participate in the primary to nominate candidates for representatives in Congress a necessary part of the right to participate in the election. The primary election, as above shown, is simply a substitute for its predecessor a convention or a caucus, and it is as stated above, a mere nominating device. It is true that in the interest of economy and practical efficiency in voting, many States have recognized this nominating device, and prepare a so called official ballot in accordance with the result of the primary; but no one is restricted in his vote at the final election to the names on the official ballot. At the election proper a voter may substitute a name of his own choice in place of a name on the ballot; this right cannot be refused, and it is frequently exercised. The right, therefore, to participate in the nomination is not a necessary part of the right to elect, nor is it indispensably connected with it. In *State v. Johnson*, supra, the Court said:

"The independence of the elector to cast his vote at the general election for those whom he believes will best represent his political ideas or best conserve public interests remains undisturbed."

While it is true that Congress has in the act of August, 1911, recognized for some purposes the primary election, it has also equally recognized nominating conventions. Would it be contended that if plaintiff had been voting for a precinct delegate to a county convention, which in turn should elect delegates to the congressional convention, which in turn should make nominations for representatives in Congress, and the precinct judges had refused to count the plaintiff's vote as cast, that a right of action in his favor would have arisen under the Constitution or Laws of the United States? I think not. Yet his vote in the precinct

would be a step taken toward the election of a representative in Congress.

The weakness of the plaintiff's contention lies in the assumption that a nominating convention or a primary election is a necessary step in the election of a representative in Congress. It is a very common step, and a convenient step, but not a necessary step.

A primary election not being a necessary step in the election of a representative in Congress, cannot be held to be included by fair implication in the meaning of the term "election" as used in the Constitution of the United States touching the election of representatives in Congress.

Whether it might be desirable for Congress to fully recognize and adopt the States' primary elections and the laws relating thereto so far as they relate to the nominations of representatives in Congress, and to provide for the protection and enforcement of the rights of voters at such primary elections, is a question which the courts are not called upon to decide. It is sufficient to say that as yet Congress has not specifically done so, and in my opinion, it has not done so by implication.

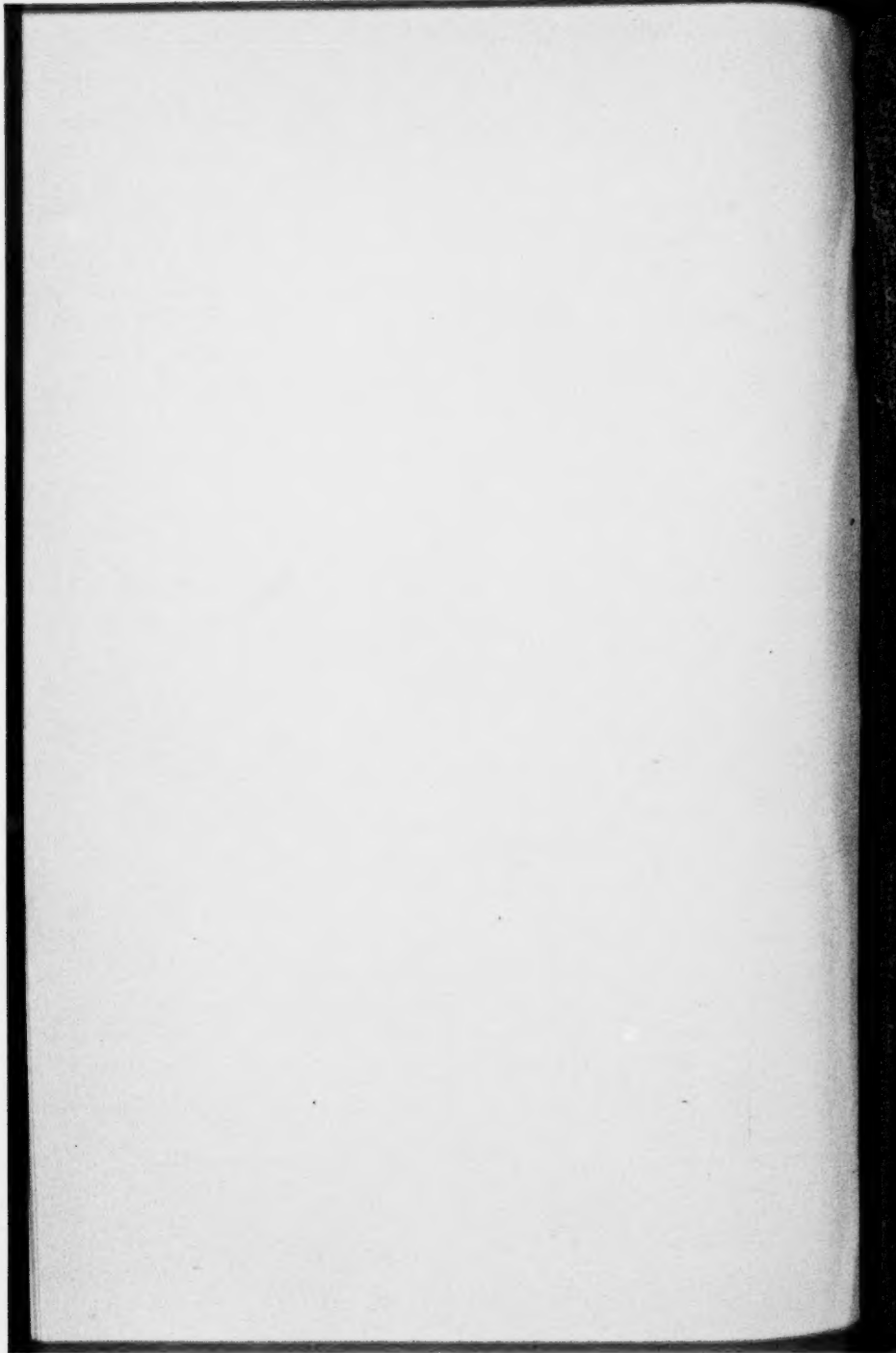
Before the court can grant the present application of the plaintiff it must decide that it has jurisdiction of the case on the ground that the action is one arising under the Constitution or Laws of the United States. In my opinion, the action does not so arise, either directly, or by fair implication. Therefore, I am constrained to hold that this Court has not jurisdiction of the action, and it necessarily follows that the present application must be denied.

In view of the foregoing, it becomes unnecessary to decide or to discuss the other questions involved in the application.

Dated October 2, 1915.

WILBUR F. BOOTH,
Judge.

○



INDEX

	PAGES
Statement of Case	1
(a) Proceedings in Court Below	1
Demurrer raising construction of Sec. 37	2
Decision of District Court sustaining demurrer, 2, 3	4
(b) The Indictment	4
Alleges conspiracy to defraud United States	4
By bribery of electors at Congressional elec-	3, 4
tions	3, 4
First and Eighth counts allege violation of laws	4, 5
of Rhode Island prohibiting bribery	4, 5
Eleventh count is only count alleging violation	5, 6
of specific provision or constitution or laws of	5, 6
United States, to wit, Art. I, Sec. 2 of Con-	5, 6
stitution	5, 6
Overt acts allege completed acts of bribery	6
Assignments of Error	6
But one ruling on which error is predicated, that	6
Sec. 37 does not embrace conspiracy to bribe	6
All assignments of error not separately argued	6
Fundamental grounds of controversy	6, 7
Argument	8
I. Sec. 37 of Penal Code of United States does not	8
protect and was not intended as a statute for the	8
protection of elections for Representatives in Con-	8
gress of the United States from a Conspiracy to	8
bribe Electors at such Elections	8
Indictment does not allege conspiracy to assail	8
laws of United States or to interfere with	8
Federal Officers in discharge of functions	8
Does not fall within Sec. 19 of Penal Code	10

	PAGES.
Question involves relation between Government of United States and states, relating to regulation of elective franchise	10
Defendants' contention that Congress under Sec. 37 did not intend to enter this field	11
Opinion of lower Court	11, 12
(a) Power to Regulate Congressional Elections	12
Art. I, Sec. 4 of Constitution, source of power, 12, 13	
States have primary power	13
United States has ultimate power	13
Congress must act before United States has jurisdiction	13
(b) Rule of Construction	13
Court will not presume Congress intended to occupy field of concurrent jurisdiction in absence of clear enactment	13, 14
Joplin Mercantile Co. v. United States, 235 U. S. 699	14
(c) Contemporaneous Exposition	15
Madison's argument before Virginia Convention	15, 16
Federalist	16
Story, Commentaries	16
(d) Early Legislation	16
(e) Acts of 1870 and 1871 Regulating Federal Elections 17	
Acts in force in 1878 demonstrates Congress did not intend to embrace bribery at elections under second clause of Sec. 37	17, 18
Sec. 5511 Rev. Stat. prohibiting bribery, etc., 18, 19	
Sec. 5512 regulating registration of voters	19
Sec. 5515 relating to State election officers	19
Civil Rights Act, Sec. 5508, Rev. Stat.	20

	PAGES.
United States v. Mosley, 238 U. S. 383, con- sidered	20, 21
Circumstances under which Sec. 5508 and second clause of Sec. 5440 were enacted dissimilar	21
Sec. 37 not connected with legislation in respect to bribery at elections or enforcement of civil rights	21
(f) Repeal of Acts of 1870 and 1871 Regulating Con- gressional Elections	22
Secs. 5511, 5512, 5515, 5520, and provisions vest- ing administrative control in United States over federal elections, repealed	22
Report of Committee on Repeal of Federal Election Laws, 53d Congress	23
Reason for repeal to divest Federal Govern- ment of jurisdiction over certain election offenses, including bribery	23, 24
(g) Subsequent Legislation	24
Same policy followed of leaving to States regu- lation of election in legislation under 17th Amendment	24
Act of June 4, 1914, Chap. 123, 38 Stat. 384, cited	24
James v. Bowman, 190 U. S. 127, holding unconstitutional Sec. 5507 and deciding that United States Courts have no power to punish bribery, considered	25, 26, 27
Language of constitution, legislative history and decisions show Congress never intended to punish bribery at elections under Sec. 37, 27, 28	
II. The Courts of the United States have no jurisdiction to punish conspiracy to bribe electors at a Congressional Election	28

	PAGES
Indictment based on power of Court to punish conspiracies to bribe electors.....	28
Overt acts allege completed acts of bribery, 28, 29	
United States could not maintain an indictment alleging bribery.....	29
Could not maintain indictment for conspiring to commit offense against United States under first clause of Sec. 37.....	29
Government has denominated such acts con- spiracy to defraud the United States.....	29
Immaterial whether conspiracy be denominated conspiracy to defraud United States or to commit offense against the United States in view of question presented.....	29, 30
Essential question: Has Congress relegated power under Sec. 4, Art. I, to legislate respecting bribery to the states	30
Opinion of lower Court.....	30
By repeal of Sec. 5511 conspiracy to bribe voters ceased to be a conspiracy to commit an offense under first clause of Sec. 5440, Rev. Stat.....	31
Cannot presume that Congress intended to reserve power under second clause of Sec. 37 to punish identically same subject matter.....	31
United States cannot indirectly punish acts which it has no power to punish directly either as bribery or conspiracy to bribe.....	31

- III. The United States cannot maintain an Indictment for conspiracy to defraud the United States by the bribery of electors at a Congressional Election in the absence of a statute declaring or defining the right or functions in respect to which the United States was to be defrauded as alleged in the Indictment.....32

	PAGES
Indictment drawn on theory that United States has right to fair and free election in absence of penal legislation	32
Construction of indictment by lower Court in this respect	32, 33
"Defraud" as used in Sec. 37 is broader than at common law	33, 34
Admitttted that it covers conspiracies to assail administration of laws of United States	34
Some provision of positive law declaring and defining rights of the United States must be involved to ground indictment under Sec. 37 . . .	34
Sec. 2, Art. I of Constitution has no application to subject matter of bribery	35
Right of citizen to vote under Sec. 19 protected . . .	35
This right not involved in the case	35
Sec. 4, Art. I governs legislation protecting election from bribery	36
Does not create judicial rights, but is grant of power to create them	36
United States v. Waddell, 112 U. S. 76	37
Government argument that Sec. 19 declares right of United States, unsound	37, 38, 39
Provisions of United States statutes in force respecting elections	40
None of them relate to bribery at elections	40
Entire regulation and protection of elections except as specified in hand of States	40
No penal laws of United States violated by alleged conspiracy	41
No administrative regulations assailed	41
No right declared by any statute violated	41

	PAGES
Rights violated, if any, rights of State of Rhode Island.....	42
Scope of Sec. 37 under theory of Government.....	42
Would expand section beyond legislative foresight	42
Meaning of fair and free election not fixed by statute or common law.....	43
Bribery not only means of unduly influencing election.....	43
What acts included as violating free and fair election only defined by judicial legislation.....	43
Also if Sec. 37 protects Congressional election must extend to protection of creation of executive and judicial branches.....	43, 44
Congress did not intend to give Sec. 37 such scope.....	45
IV. United States cannot maintain an indictment for conspiring to defraud the United States based on the delegations of a conspiracy to violate the penal laws of the State of Rhode Island prohibiting bribery at an election held within the State.....	46
Indictment sets up conspiracy to defraud United States by violation of laws of Rhode Island prohibiting bribery.....	46
First and eighth counts drawn on this theory.....	46
Administration of laws of Rhode Island not to be interfered with.....	47, 48
Law of Rhode Island relating to bribery, Sec. 3, Ch. 20, General Laws of Rhode Island, 1909.....	48, 49
Position of United States is that laws of Rhode Island create a right which United States can make foundation of indictment.....	49
Only state creating penal law can enforce rights under them.....	50

	PAGES
Huntington v. Atrill, 146 U. S. 657	50
Pettibone v. United States, 148 U. S. 197.....	50, 51
States do not act as agents of the United States in legislating on sub- ject of bribery, so as to create Fed- eral rights.....	51, 52, 53, 54
No adoption of State statutes by implication, 54, 55	
Sho-Shone Mining Co. v. Rutter, 177 U. S. 505.....	55
Swin v. Breedlove, 2 How. 29.....	56
Legislative construction	57
Secs. 5511, 5512, 5515 Rev. Stat. adopted state statutes as basis for Federal action.....	57
Specific legislation required	57
"Anomalous condition" presented: In re Coy.....	58
Repeal of statutes	58
Court asked to validate indictment on theory that laws of Rhode Island are part of Federal Code and revive condition existing before repeal of election laws of 1870.....	58
If theory of indictment is correct large number of state statutes would be swept into Federal Courts for adjudication	59
Question of what statutes protect fair and free elections not defined by Congress.....	59
Must be ascertained by Courts in absence of legislation.....	59
Rights violated are rights of State of Rhode Island.....	60
V. This Indictment is not sustained by the authority of any decisions in the Courts of the United States	60
Indictment framed to bring case within doctrine of Haas v. Henkel, 216 U. S. 462; Curley v. U. S., 130 Fed. 1; U. S. v. Aczel, 219 Fed. 917, 232 Fed. 652.....	60

LAWS AND CONSTITUTIONAL PROVISIONS.

Constitution of United States.	PAGES.
Article 1, Sec. 2.....	28, 34, 35, 63, 64, 65
Article 1, Sec. 4.....	11, 12, 23, 26, 27, 30, 34, 35, 36, 39, 40, 42, 51, 53, 72, 73
Article II, Sec. 1.....	44
Article IV, Sec. 3.....	37
United States, Rev. Stat., Sec. 25.....	40
United States, Rev. Stat., Sec. 27.....	40
United States, Rev. Stat., Sec. 5440.....	1, 17, 21, 22, 30, 31, 62, 63
United States, Rev. Stat., Sec. 5507.....	25
United States, Rev. Stat., Sec. 5508.....	20, 21, 39
United States, Rev. Stat., Sec. 5511.....	18, 19, 22, 30, 57
United States, Rev. Stat., Sec. 5512.....	19, 22, 57
United States, Rev. Stat., Sec. 5515.....	19, 22, 53, 57
United States, Rev. Stat., Sec. 5520.....	19, 39
United States Penal Code, Sec. 19.....	10, 22, 35, 37, 38, 39, 40, 63
United States Penal Code, Sec. 32.....	67
United States Penal Code, Sec. 37.....	1, 2, 3, 6, 7, 8, 26, 29, 31, 32, 33, 34, 43, 45, 49, 54, 55, 56, 60, 61, 66, 67, 68, 69, 70, 72, 73
Act of Feb. 8, 1894.....	22
Act of March 2, 1907, 34 Stat. L. 1246.....	3
Act of June 25, 1910, Chap. 392.....	40
Act of Aug. 19, 1911, Chap. 33.....	40
Act of June 4, 1914, Chap. 123, 38 Stat. 384.....	24
General Laws of Rhode Island 1909.	
Chapter 20, Sec. 3 (Bribery Act).....	5, 48, 49

Supreme Court of the United States

OCTOBER TERM, 1916.

NO. 684.

THE UNITED STATES, PLAINTIFF IN ERROR,
vs.
CHARLES HAMBLY, HENRY C. WILCOX, ET AL.

BRIEF ON BEHALF OF CHARLES HAMBLY,
HENRY C. WILCOX, JAMES MORAN, PATRICK
WELCH, LOUIS DUBOIS, JOHN KEARNS,
GEORGE R. LAWTON, ZENON ST. LAURENT,
SAMUEL S. STEWART, GEORGE W. POTTER,
HERBERT L. BARKER, PHILLIP MACOMBER,
THOMAS SISSON, RALPH BOARDMAN, JOHN
CAIN, JOHN PEACOCK, WILLIAM C. WOOD
AND PETER CLARK, DEFENDANTS IN
ERROR.

STATEMENT OF CASE.

(a) PROCEEDINGS IN COURT BELOW.

The defendants in error were indicted in the District Court of the United States for the District of Rhode Island on May 5, 1916 (record page 2).

The indictment, brought under Section 37 of the Criminal Code of the United States (Sec. 5440 Rev. Stat.), was in eleven counts, and alleged in substance that the

defendants conspired to defraud the United States by bribing electors at an election of a Representative in Congress of the United States held in the Town of Tiverton and State of Rhode Island, on November 3, 1914. (record pages 2-90)

Each of the defendants filed a demurrer to the indictment. (record pages 91-94). The demurrers of all the defendants, with the exception of that filed by GEORGE D. FLYNN, were identical with the demurrer filed by CHARLES HAMBLY, as appears by stipulation. (record page 90)

The demurrers raised the question in various forms as to whether Sec. 37 of the Penal Code of the United States could be construed to embrace the alleged conspiracy to corrupt a Congressional election by the bribery of electors as set forth in the various counts of the indictment.

As there was no question made but that the demurrers sufficiently and appropriately raised this question, it will not be necessary to set forth the grounds of the demurrers more at large.

(See grounds of demurrer one, (record page 91) three, (record page 92) four, five, six, eight, nine and ten, (record page 92) twelve, fourteen and fifteen, (record page 93) seventeen, eighteen and nineteen. (record page 94)

The District Court sustained the demurrers, (record page 105) and entered an order to that effect. (record page 106)

The decision sustaining the demurrers was based on the ground "that upon a proper construction of the statute

on which the indictment is founded, it does not cover a conspiracy of the character charged." (Opinion, record pages 105-106)

The Court based its decision on the grounds advanced in the opinion rendered in the case of *United States vs. Mathew Gradwell, et al.*, Indictment 114, No. 683, which case is now pending in this Court. (Opinion, record page 105)

Other questions raised by the demurrer and not involving the construction of the statute under consideration were reserved for further hearing if necessary. (record pages 105-106)

The United States prosecuted a writ of error under the Criminal Appeals Act (Act, March 2, 1907, 34 Stat. at L 1246) to the order sustaining the demurrers, (record page 106) and assigned twenty-one errors to the ruling of the Court. (record pages 108-111)

(b) THE INDICTMENT.

The indictment is in eleven counts and each count purports to charge the defendants with conspiring to defraud the United States under the second clause of Sec. 37 of the Penal Code of the United States. (record pages 2-90)

The controlling language of each count in this respect is that the defendants "did conspire to defraud the United States," the allegations of each count in this respect being similar to that found in count one. (record page 3)

All of the counts of the indictment also allege in substantially the same terms that the defendants conspired to defraud the United States by bribing qualified

electors by the payment, or promises of payment, of money to vote for either a certain named candidate for Representative in Congress, or as the defendants desired them to vote at the election on November 3, 1914. (See allegations of the second count, record pages 10-11, and fifth count, record pages 34-35)

All of the counts except the first count (record pages 2-3) allege in substantially similar language that the defendants intended by the bribery of electors to procure the election of a certain named candidate as Representative in Congress, (record pages 2-90).

The first and eighth counts (record pages 2-3 and 57-59 respectively) allege that the United States was to be defrauded by the bribing of electors in violation of a certain law of the State of Rhode Island making bribery at elections a crime.

The first count (record pages 2-3) alleges that

"said defendants were to defraud the United States by unlawfully and corruptly prejudicing and hindering the enforcement and administration of certain laws of the State of Rhode Island looking to the conduct of elections in that State including elections at which Representatives in Congress of the United States were chosen * * in that they were to pay to each of a great number, to wit, three hundred of the voters qualified to vote at said election for a Representative in Congress, a sum of money usually five dollars in consideration of his having given his vote at said election for a Candidate for Representative in said Sixty-fourth Congress; * * said laws of said State of Rhode Island throughout said period being, * * so framed as to prevent such payment of money to such voters, and the United States

then having the right to have said laws enforced and lawfully administered in the premises to have each of said voters left to exercise his right to vote for such Representative free from the influence of bribery and corruption."

The eighth count (record pages 57-59) sets forth Section 3, Chapter 20, General Laws of Rhode Island, 1909, which defines and punishes bribery of electors "at any election."

The count then alleges a conspiracy to defraud the United States by fraudulently procuring the election of a certain named candidate for Representative in Congress by the bribery of electors, and alleges that such conspiracy was

"contrary to the laws of the State of Rhode Island made and provided for the protection of elections of Representatives in Congress, and so *** the ** defendants, did conspire ** to defraud the United States."

The eleventh count (record pages 82-83) is the only count wherein is set forth specifically any provision of the Constitution or laws of the United States under which it is claimed any rights accrued to the United States which were to be violated by the alleged conspiracy.

This count alleges that the defendants

"did conspire ** to defraud the United States by committing a wilful fraud upon Section 2 of Article I of the Constitution of the United States ** by bringing about a general corruption of the voters of the Town of Tiverton by a general bribing and offering to be of a large number of voters to vote for one Roswell B. Burchard, a candidate for Representative in Congress."

The overt acts set forth to support the various counts of the indictment are identical and a large number thereof allege in substance completed acts of bribery at the election of November 3, 1914. (See overt acts numbered eleven and thirteen, record page 5; seventeen, record page 6; twenty-five, twenty-eight and twenty-nine, record page 7; thirty, thirty-one and thirty-six, record page 8; thirty-eight, forty, forty-one and forty-two, record page 9)

THE ASSIGNMENTS OF ERROR.

The decision of the District Court sustaining the demurrers and the order entered thereon embraced in reality but one ruling, to wit:

"that upon a proper construction of the statute on which the indictment is founded it does not cover a conspiracy of the character charged," (record pages 105-106) but to this single ruling of the Court, the United States has assigned twenty-one errors (record pages 108-111) the assignments evidently being drawn with a view to challenge all the reasons which the learned Court advanced in its opinion as pertinent to and controlling its decision in the premises.

For this reason, the assignments of error will not be separately considered in this brief, but the fundamental grounds of the controversy will be considered under the following general heads of argument as follows:

ONE. Section 37 of the Penal Code of the United States does not protect and was not intended to protect the election of Representatives in Congress of the United States from a conspiracy to bribe electors at such election.

Two. The Courts of the United States have no jurisdiction to punish a conspiracy to bribe electors at a Congressional election.

THREE. The United States cannot maintain an indictment for conspiring to defraud the United States by the bribery of electors at a Congressional election in the absence of a statute, securing, declaring or defining the rights or functions in respect to which the United States was to be defrauded as alleged in the indictment.

FOUR. The United States cannot maintain an indictment under Sec. 37 of the Penal Code for conspiring to defraud the United States based on allegations of a conspiracy to violate the penal laws of the State of Rhode Island prohibiting bribery at elections held within that state.

FIVE. This indictment is not sustained by the authority of any decisions of the Courts of the United States.

ARGUMENT.

POINTS.

I.

SECTION 37 OF THE PENAL CODE OF THE UNITED STATES DOES NOT PROTECT, AND WAS NOT INTENDED AS A STATUTE FOR THE PROTECTION OF ELECTIONS FOR REPRESENTATIVES IN THE CONGRESS OF THE UNITED STATES FROM A CONSPIRACY TO BRIBE ELECTORS AT SUCH ELECTION.

AUTHORITIES.

- Federalist, Dawson's Ed.* 410.
James vs. Bowman, 190 U. S. 127.
Joplin Mercantile Co. vs. U. S., 235 U. S. 699.
Madison Argument before Virginia Convention,
3 Farrand 311-312.
Ex Parte Siebold, 100 U. S. 717.
1 Story, Commentaries on Constitution, 4th Ed., 576.
Trade Mark Cases, 100 U. S. 82.
U. S. vs. Mosley, 283 U. S. 383.

The gist of the indictment is that the defendants conspired to defraud the United States by the bribery of electors of a Representative in Congress.

The indictment does not allege any conspiracy to commit an offense against the United States, nor any conspiracy to defraud the United States of any property, nor to obstruct, or interfere with, or defraud any Federal officer in the discharge of his official functions or duties, nor are any facts pleaded showing that the purpose of the conspiracy

was to impair or assail any administrative function of the United States, or interfere with the operations of any statute of the United States.

It is true that in the first count (record pages 2-3) the indictment does allege that the defendants were to defraud the United States by unlawfully prejudicing and hindering the enforcement and administration of certain laws of the State of Rhode Island, looking to the conduct of elections in that State, but the allegations of the indictment show that the laws referred to were laws "so framed as to prevent such payment of money to such voters," and that such laws were to be "prejudiced" and "hindered" in their enforcement *by the bribery of voters*; but there was nothing in the indictment showing any conspiracy to interfere with the duties of the officers of the State of Rhode Island charged with conducting the election or administering or enforcing the law prohibiting bribery and no such claim is made by the United States.

In other words, what is in reality set forth, is, that the defendants conspired to violate a law of Rhode Island, prohibiting the bribery of electors at elections held within the State.

Further, the alleged conspiracy did not embrace any conspiracy to interfere with the conduct of the election in the registration of voters, or the casting, reception, counting, return or canvassing of the votes of qualified electors at the election in question.

There is no allegation that any citizen of the United States was, or was to be obstructed or intimidated in the exercise of, or prevented from exercising, his constitu-

tional rights as a citizen of the United States or was to be intimidated or prevented from exercising his right of suffrage within the meaning of Section 19 of the Penal Code of the United States.

In other words, there is nothing in any aspect of the case which brings the indictment within the doctrines announced in

Ex parte Yarbrough, 110 U. S., 651; 4 Sup. Ct. Rep. 152.

Wiley vs. Sinkler, 179 U. S. 58; 28 Sup. Ct. Rep. 17.

Swafford vs. Templeton, 185 U. S. 787, 22 Sup. Ct. Rep.

Mosley vs. United States, 238 U. S. 383; 35 Sup. Ct. Rep. 904.

The question therefore is squarely presented whether the second clause of Section 37 of the Penal Code of the United States, reading as follows,

“If two or more persons * * conspire to defraud the United States in any manner or for any purpose, and one or more of the parties do any act to effect the object of the conspiracy, each of the parties shall be fined, etc.”,

can be construed to embrace a conspiracy to bribe electors to vote for a particular candidate for Representative in Congress at a Congressional election.

The construction of this statute in respect to the indictment not only embraces the relations between the United States and the defendants in error, but involves the relations between the United States and the several states of the Union, respecting the regulation of Congressional elections.

Was the second clause of Section 37, intended, and can it reasonably be construed, to embrace within its scope the important matters of bribery and corruption at Congressional elections, thus vesting the Federal Courts with jurisdiction over such cases; or should it be construed to leave the control and regulation thereof where they have, with a brief exception, hitherto remained, namely, in the hands of the several states.

This mere statement of the case demonstrates the character of the questions involved.

Whether the individual states or the Federal Government should protect the purity of the ballot at Congressional elections presents a broad question of public policy to be decided by Congress in the exercise of the reserved power granted it under Art. 1, Sec. 4 of the Constitution of the United States.

It is the contention of the defendants that in the absence of specific legislation of any character to this end, it cannot be presumed that Congress intended to occupy the field embracing offenses against the elective franchise by the general language of the second clause of Sec. 37.

The learned Court below in discussing this question well said:

"The question of protecting the United States against the class of frauds which involve merely the relations of the offender and the United States, and the question of legislating respecting the conduct of the elections whereby the people of the respective States choose their Representatives in Congress are substantially distinct; so distinct in substance that it is highly improbable that it was intended to legislate on both together. The *Curley case*, 122 Fed. 738, 130

Fed. 1; *Haas vs. Henkel*, 216 U. S., 462, 479; and the cases other than the *Aczel* case, involved no consideration of the relations between State and National Governments, or of the political policy of exercising the constitutional power of Congress to legislate concerning the elections which are primarily the act of the people of the States in choosing their Representatives." (record page 99)

and

"It is impossible to believe that in extending the conspiracy statute to embrace frauds other than those upon the revenue it ever occurred to any Members of Congress that they were legislating upon the subject of congressional or presidential elections, or that questions of public policy as to the relations between State and Nation were involved. This subject is so important, and of such special character, that it would have been dealt with specifically and not in an omnibus clause, had it been intended to deal with it at all." (record page 103)

(a) POWER TO REGULATE CONGRESSIONAL ELECTIONS.

A consideration of the language of the Constitution by virtue of which both the several States and the Congress of the United States are empowered to regulate Congressional elections; the subject matter embraced; the contemporaneous construction of the Constitution in this respect; and the course of legislation on this subject demonstrate that the position of the Court below was correct.

Section 4 of Article I of the Constitution of the United States provides,

"The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the

Congress may at any time by law make or alter such regulations except as to the places of choosing Senators."

While there can be no question of the ultimate power of Congress to act, yet the clear intent of this section is to leave to each state the primary power to regulate the election of its own Representatives in Congress. This is the normal and usual method contemplated by the Constitution. Before the United States has jurisdiction over the matters growing out of Congressional elections, *Congress must act* and moreover it being a field of legislation over which the states have express powers, it should clearly appear that Congress intended to occupy such field by legislation of its own.

"The power of Congress, as we have seen, is paramount, and may be exerted at any time and to any extent which it deems expedient; *and so far as it has exercised and no further*, the regulations effected supersede those of the States which are inconsistent therewith."

Ex parte Siebold, 100 U. S. 717.

(b) RULE OF CONSTRUCTION.

That it cannot be presumed that Congress intended to occupy a field of legislation of such political importance, within which the states have the power to legislate, without clear enactment to that effect, is obvious from the nature of the questions which arise in such a situation. The line of demarcation between two sovereignties each exercising jurisdiction over the same general subject matter must be so drawn as to avoid conflict and confusion, and, in the absence of specific legislation no such line can be drawn except by judicial legislation exerted in each case as it arises.

The application of the rule followed by this court, that an act of Congress will not be construed to confer jurisdiction on the United States in a field wherein the states are exercising a lawful jurisdiction, in the absence of a specific declaration to that effect, is peculiarly called for in this case.

Joplin Mercantile Co. vs. United States, 235 U. S. 699; 35 Sup. Ct. Rep. 291.

In that case, this Court held that a statute of Congress *not repealed* would not be enforced because Congress had given the State of Oklahoma jurisdiction over the same subject matter, that of controlling traffic in intoxicating liquors with the Indian tribes in Oklahoma.

The Court said:

"Without deciding that such control must necessarily be exclusive of co-existing Federal jurisdiction over the same subject-matter, it seems to us that concurrent jurisdiction would be productive of such serious inconvenience and confusion, that, in the absence of an express declaration of a purpose to preserve it, we are constrained to hold that the active exercise of the Federal authority was intended to be at least suspended pending the exertion by the state of its authority in the manner prescribed by the enabling act."

In the *Trade-mark Cases*, 100 U. S., 82, Mr. Justice Miller in delivering the opinion of the Court said:

"If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do, namely: make a trade-mark law which is only partial in its operation, and which would com-

plicate the rights which parties would hold, in some instances under the Act of Congress, and in others under state law."

(c) CONTEMPORANEOUS EXPOSITION.

The question as to whether or not the Federal Government or the States should regulate the method of conducting the election of Congressmen does not appear to have been discussed at great length in the Federal Constitutional Convention.

It appears, however, that upon consideration of the subject the objections to any exclusive method of control were recognized as insuperable and it was hence decided to allow each state in its independent, sovereign capacity, to regulate the election of its Congressmen in the first instance, subject to the ultimate power of Congress to legislate if it saw fit, whenever an emergency was presented calling for such action.

"It was founded impossible to fix the time, place and manner of the election of Representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution. And considering the state governments, and general government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former and the general regulations to the latter. Were they exclusively under the control of the state governments, the general governments might easily be dissolved. But, if they be regulated properly by the state legislatures, the Congressional control will very probably never be exercised."

Madison, Argument before Virginia Convention, 3 Farrand, Record of the Federal Convention, pages 311-312.

See also,

Dawson's Federalist, Essay No. 58, page 410.

Judge Story's exposition while not contemporaneous may properly be referred to as authoritative. He said:

"It was obviously impracticable to frame and insert in the Constitution an election law which would be applicable to all possible changes in the situation of the country, and convenient for all the states. A discretionary power over elections must be vested somewhere. There seemed but three ways in which it could be reasonably organized. It might be lodged either wholly in the national legislature, or wholly in the state legislatures, or primarily in the latter and ultimately in the former. The last was the mode adopted by the convention. The regulation of elections is submitted, in the first instance, to the local governments, which, in ordinary cases (*), and when no improper views prevail, may both conveniently and satisfactorily be by them exercised. But in extraordinary circumstances, the power is reserved to the national government, so that it may not be abused, and thus hazard the safety and permanence of the Union."

1 Story, Commentaries on the Constitution, 4th Ed., page 576, Section 816.

(d) EARLY LEGISLATION.

This manifest intent of Section 4 was followed by Congress which did not exercise its reserved power until 1842.

Some time previous to this date, a practice had grown up in some states of electing all the candidates for Congress

on a general state ticket. In order to obviate the evils which it was thought might result from such a method of election, Congress provided in 1842 for a uniform method of election of Congressmen by districts.

Later legislation by Congress required that elections for Congress should all be held on the same day.

(See as to history of Congressional regulation of elections prior to 1870 and 1871, *Ex parte Siebold, supra.*)

(e) ACTS OF 1870-1871 REGULATING FEDERAL ELECTIONS.

In 1870 and 1871, in view of the unusual conditions following the Civil War and the admission of the negro race to suffrage, Congress enacted radical and far-reaching legislation vesting in the United States supervision and control over the election of Congressmen.

These provisions are found in the Act of May 31, 1870, and Act of February 28, 1871 entitled, "The Elective Franchise."

An examination of certain sections of these Acts, which were in force in 1878, when Congress enacted Sec. 5440, Rev. Stat. in its present form, demonstrates that Congress could not have intended to punish conspiracies to bribe electors, independently of all other Federal statutes on the subject, *under the second clause of Section 5440 (Sec. 37 Penal Code of the United States.*

Disregarding certain statutes which were declared unconstitutional either previous to or subsequent to 1878, it appears that Congressional elections were thoroughly and amply safeguarded against bribery, violence, repeating

and kindred offenses, and also against conspiracies to commit such acts, or to obstruct citizens of the United States in the exercise of the right to vote at Federal elections.

Section 5511 Rev. Stat., Act, May 31, 1870, Ch. 114, 16 Stat. L. 141, was sweeping in the protection it afforded Congressional elections.

It provided that,

"If, at any election for Representative or Delegate in Congress, any person knowingly personates and votes, or attempts to vote, in the name of any other person, whether living, dead or fictitious; or votes more than once at the same election for any candidate for the same office; or votes at a place where he may not be lawfully entitled to vote; or votes without having a lawful right to vote; or does any unlawful act to secure an opportunity to vote for himself; or any other person; or by force, threat, intimidation, bribery, reward, or offer thereof, unlawfully prevents any qualified voter of any State or of any Territory, from freely exercising the right of suffrage, or by any such means induces any voter to refuse to exercise such right, or compels, or induces, by any such means, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interferes in any manner with any officer of such election in the discharge of his duties; or by any such means, or other unlawful means, induces any officer of an election or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty or any law regulating the same; or knowingly receives the vote of any person not entitled to vote, or refuses to receive the vote of any person entitled to vote or aids, counsels, procures, or advises any such voter, person, or officer to do any act

hereby made a crime, or omit to do any duty the omission of which is hereby made a crime, or attempt to do so, he shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three years, or by both, and shall pay the costs of the prosecution."

The registration of voters for Congressional elections was protected by provisions similar in character.

Section 5512, Rev. Stat., Act of February 28, 1871, Ch. 99, 16 Stat. L. 433; Act of May 31, 1870, Ch. 114, 16 Stat. L. 145.

State election officers were brought under the jurisdiction of the United States by Section 5515, Act of May 31, 1870, Ch. 114, 16 Stat. L. 145; Amended, Act, February 18, 1875, Ch. 80; 18 Stat. L. 320.

By the operation of the first clause of Section 5440, Rev. Stat., which made it a crime to conspire to commit an offense against the laws of the United States, conspiracies to do the things made unlawful by the statutes above quoted were offenses against the United States.

The United States was thus completely protected against acts and conspiracies leveled at the freedom, fairness and orderly conduct of elections.

Moreover, not only were the elections themselves protected from the time of registration until the time of the return of the certificate to the person elected, but by Sec. 5520, Rev. Stat., Act, April 20, 1871, Ch. 22, 17 Stat. L., it was made a crime,

"to conspire to prevent by force or intimidation, or threat, any citizen who is lawfully entitled to vote,

from giving his support or advocacy, in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of the Congress of the United States."

In addition to the wide and stringent provisions of the sections quoted above, Rev. Stat., Act, May 31, 1870, Ch. 116, 16 Stat. L. 141, made unlawful a conspiracy to injure or intimidate citizens in the exercise of their civil rights.

This section was in force in 1878 in substantially the same form as Sec. 5508, Rev. Stat. It provided:

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

This statute extends protection to the right to vote for members of Congress and the right to have the vote counted and "does not confine itself to conspiracies contemplating violence", and is devoted to the protection "of all Federal rights from conspiracies against them".

U. S. vs. Mosley, 238 U. S. 383.

It is contended by the government that *U. S. v. Mosley* construing this section is conclusive against the

decision of the lower court to the effect that if Congress had intended to protect the right of the United States in elections, it would have said so. (Brief of the U. S., page 17)

The circumstances under which Section 5508, and the second clause of Section 5540 were enacted were so dissimilar that no valid argument can be drawn from the Mosley case in support of the wide construction sought to be given to Section 37.

Section 5508 was enacted as part and parcel of a drastic and far-reaching act aimed as a whole at protecting and enforcing the rights of citizens of the United States in all possible respects, including the right to vote.

As was said in *U. S. v. Mosley*, "Congress put forth all its powers," to deal with the evils which the act was designed to suppress.

Section 37 has no such legislative history, and was not connected in any way with the legislation which, as has been pointed out above, was already on the statute books.

From the foregoing recital of acts in force in 1878, it is clear that the elective franchise was amply, comprehensively and stringently protected from violence, bribery, repeating, false personation, interference with the election officers, derelictions of duty on the part of election officers, false and fraudulent counting of votes, and the mutilation, destruction or conversion of election papers and certificates; the registration of voters was likewise protected; the statutes extending this protection included in their scope all who aided, counsel, procured or advised any of the unlawful things to be done; in addition to this by force of Section 5440, all conspiracies to do these things were offenses

against the United States; finally, Section 5508 Rev. Stat., protected citizens of the United States against all conspiracies to injure them in the exercise of their civil rights, including the right to vote and the right to have the vote counted.

In view of the scope of this legislation in force in 1878, it is an exceedingly cogent argument that Congress did not intend to occupy any part of the field so minutely covered when it passed the second clause of Sec. 5440 in its present form, and that Sec. 5508, Sec. 19, Penal Code is the only Federal statute protecting Congressional elections from conspiracies affecting their fairness or freedom.

(f) REPEAL OF ACTS OF 1870-1871 REGULATING CONGRESSIONAL ELECTIONS.

Secs. 5511, 5512, 5515, 5520, and all the provisions of the Acts of May 31, 1870 and February 28, 1871, vesting administrative control over Federal elections in the United States Government, were repealed by Act of February 8, 1894, Chaps. 25-28 Stat. at L. 36.

Sec. 5508 was left in force unchanged.

Congress by this measure divested the United States of jurisdiction over certain offenses against the elective franchise, including bribery; of power to enforce state laws regulating elections; and abandoned any administrative control over Congressional elections by the Federal Government.

At the same time, Congress manifested its intent to protect citizens of the United States against conspiracies affecting the exercise of the elective franchise at Congressional elections by leaving Sec. 5508 Rev. Stat., (Sec. 19 Penal Code) on the statute book.

The reasons for the repeal and the conditions which made regulation by the Federal Government over Congressional elections inexpedient, are set forth in the report of the Committee on the Repeal of the Federal Election Laws (53d Congress, 1st Session, Report No. 18). The report stated:

"The object of legislation should be to prevent conflicts between the State and Federal authorities. These statutes have been fruitful in engendering them. Enacted in reconstruction times, when it was deemed necessary to carry out those measures, the purpose for which they were framed having happily passed away, we feel that they can not be too quickly erased from the statute books." * * * * *

"Let every trace of the reconstruction measures be wiped from the statute books; let the states of this great Union understand that the elections are in their own hands, and if there be fraud, coercion, or force used, they will be the first to feel it. Responding to a universal sentiment throughout the country for greater purity in elections, many of our states have enacted laws to protect the voter and to purify the ballot. These, under the guidance of state officers, have worked efficiently, satisfactorily and beneficently; and if these Federal statutes are repealed that sentiment will receive an impetus which, if the cause still exists, will carry such enactments in every state in the Union."

It is manifest that Congress, in repealing these measures, acted according to the uniform construction which has been given to Sec. 4 of Article I of the Constitution of the United States, to the effect that, in ordinary cases, it was more convenient and satisfactory to have the several states exercise *exclusively* the general control over Congressional elections and protect such elections from bribery

and corruption than for the Federal Government so to do, and declared the public policy of the United States to be one of non-interference with the local laws and regulations of the States in this respect.

(g) SUBSEQUENT LEGISLATION.

The same general policy of leaving to the states the regulation and control of elections was followed in legislation under the Seventeenth Amendment to the Constitution of the United States, providing for the election of Senators by the people.

Act of June 4, 1914, Ch. 103, 38 Stat. 384, entitled, "An Act providing a temporary method of conducting the nomination and election of United States Senators," provided as follows:

"Sec. 2. That in any state wherein a United States senator is hereafter to be elected either at a general election or at any special election called by the executive authority thereof to fill a vacancy, until or unless otherwise specially provided by the Legislature thereof, the nomination of candidates for such office not heretofore made shall be made, the election to fill the same conducted, and the result thereof determined, as near as may be in accordance with the laws of such state regulating the nomination of candidates for an election of members at large of the national House of Representatives; Provided, that in case no provision is made in any state for the nomination or election of representatives at large the procedure shall be in accordance with the laws of such state respecting the ordinary executive and administrative officers thereof who are elected by the vote of the people of the entire state; and provided further, that in any case the candidate for senator receiving the highest number of votes shall be deemed elected.

The report of the Commission to Revise and Codify the Criminal and Penal Laws of the United States made to the Senate of the 57th Congress is significant.

That part of the report dealing with offenses against the elective franchise, stated

"While the commission is of the opinion that the enactment of adequate legislation for the punishment of fraud, bribery, etc., at elections for Representatives in Congress would be highly proper, especially as some of the States have no laws for the punishment of such offenses, it did not feel justified in reporting the same in view of the fact that provisions of that character previously adopted were repealed in 1894, and that no subsequent effort has been made by Congress for their re-enactment."

Document 62, Part 2, Page 9.

The decision of this Court in *James vs. Bowman*, 190 U. S. 127; 23 Sup. Ct. Rep. 678 construing and holding unconstitutional Sec. 5507 Rev. Stat., is important in view of the present contention of the Government that Sec. 37 can properly be construed to apply to a conspiracy to bribe electors at a Congressional election.

Section 5507, Rev. Stat.; 16 Stat. at Large, made it a crime among other things for any person

"to prevent, hinder, control or intimidate another person from exercising the right of suffrage to whom that right of suffrage is guaranteed, by means of * * bribery, etc".

This section of the Revised Statutes was not repealed in 1894 but in 1903 was declared unconstitutional in the *Bowman* case.

It was urged that Congress had power under Art. I, of Sec. 4 of the Constitution to legislate in respect to the election of Representative in Congress; that bribery took place at such election as alleged in the indictment; and that, therefore, the statute should be construed to apply to bribery at Congressional elections and the indictment sustained.

While there is no question in the case at bar of the constitutionality of Sec. 37, yet a somewhat similar contention is now made to the effect that a statute general in its terms should be held to apply to a specified subject matter, to wit, the regulation of the elective franchise at Congressional elections.

The court said:

"The difficulty with this contention is that Congress has not by this section acted in the exercise of such power. It is not legislation in respect to the elections of Federal officers, but is leveled at all elections, state or federal, and it does not purport to punish bribery of any voter, but simply of those named in the Fifteenth Amendment. On its face, it is clearly an attempt to exercise power supposed to be conferred by the Fifteenth Amendment in respect to all elections and not in pursuance of the general control by Congress over particular elections. To change this statute enacted to punish bribery of persons named in the Fifteenth Amendment at all elections, to a statute punishing bribery of any voter at certain elections, would be in effect judicial legislation."

Congress never attempted to meet the difficulty pointed out by the Court by passing any act to regulate the election of Federal officers by punishing bribery at a Federal election since that decision, but repealed the section.

The Bowman case, decided in 1903, after the repeal of the statute making bribery at Congressional elections a crime, holding that section 5507 of Rev. Stat., which was not repealed in 1894, was unconstitutional, further held that in the then existing state of Federal legislation (which has not been changed to the present time) the United States had no power to punish bribery at a Congressional election, Congress not having taken any action in respect to making such acts, offenses against the United States under Art. 1, Section 4 of the Constitution.

The Court said:

"We are fully sensible of the great wrong which results from bribery at elections, and do not question the power of Congress to punish such offenses when committed in respect to the election of Federal officials. At the same time, it is all important that a criminal statute should define clearly the offenses which it purports to punish, and that, when so defined, it should be within the limits of the power of the legislative body enacting it. Congress has no power to punish bribery at all elections. The limits of its power are in respect to elections in which the nation is directly interested, or in which some mandate of the national Constitution is disobeyed; and courts are not at liberty to take a criminal statute, broad and comprehensive in its terms and in these terms beyond the power of Congress, and change it to fit some particular transaction which Congress might have legislated for if it had seen fit."

It seems, therefore, abundantly clear from the language of Art. I, Sec. 4 of the Constitution itself, from the nature of the subject matter, and from the legislative history of enactments under Art. I, Sec. 4, and the decisions thereon, that Congress never intended, when it passed Sec. 37 in its

present form, to confer jurisdiction by force of the second clause of *that Statute* over matters involving the exercise of the elective franchise at Congressional elections; and to now construe the statute to that effect would be to construe the statute directly contrary to the rule of construction followed where the respective jurisdictions of the United States and the States are involved, and contrary to the declared public policy of the United States as shown by the repeal of 1894 of the Statutes of 1870-1871, and by the legislation subsequently enacted.

II.

THE COURTS OF THE UNITED STATES HAVE NO JURISDICTION TO PUNISH A CON- SPIRACY TO BRIBE ELECTORS AT A CONGRES- SIONAL ELECTION.

True it is that the alleged conspiracy is denominated in one count a "wilful fraud" on Art. I, Sec. 2 of the Constitution of the United States (11th count, record page 82); that such conspiracy was a fraud on the United States because it was in violation of the law of the State of Rhode Island against bribery (first and eighth counts, record pages 2-3 and 57-59 respectively), and in all the counts but the first, that the alleged conspirators agreed and confederated together to bribe voters to procure the election of a Representative in Congress.

The foundation of each and every count, however, is, that the defendants conspired to bribe qualified electors to vote for a certain candidate for Representative in Congress.

Moreover the indictment alleges as overt acts either acts preparatory to bribing voters such as the collection of

funds for that purpose (overt acts numbered two and four, record page 4); or completed acts of bribery, (overt acts numbered eleven and thirteen, record page 5; seventeen, record page 6; twenty-five, twenty-eight and twenty-nine, record page 7; thirty, thirty-one, thirty-two and thirty-six, record page 8; thirty-eight, forty, forty-one and forty-two, record page 9.)

In the final analysis, therefore, it must be said that the indictment rests on the proposition that the United States now has power to punish in its courts, a conspiracy to bribe voters at a Congressional election.

There is at the present time no statute of the United States which denounces bribery or conspiracy to bribe electors at a Congressional election as crimes against the United States, and if the indictment had alleged directly either bribery at such an election, or a conspiracy to commit an offense against the United States by bribing electors, under the first clause of Sec. 37, such an indictment could not have been maintained.

The Government, therefore, in order to escape the obvious consequences of a direct allegation of bribery, or of conspiracy to commit an offense against the United States by bribing electors, has set forth an alleged conspiracy to bribe voters at a Congressional election and has denominated these allegations a conspiracy to defraud the United States, and claims jurisdiction to punish such alleged acts under the second clause of Section 37 of the Penal Code.

Whether an indictment setting forth a conspiracy to bribe electors at a Congressional election with completed acts of bribery charged as overt acts, be denominated a conspiracy to commit an offense against the United States,

or a conspiracy to defraud the United States is immaterial in view of the broad questions presented by the record in this case.

The essential question is this: have the Courts of the United States jurisdiction to punish bribery or conspiracy to bribe electors at a Congressional election, or stated in another form; has Congress reserved its power under Sec. 4, Art. I of the Constitution to legislate respecting bribery at such elections and relegated thereby power and jurisdiction to deal with such matters to the States?

The learned Court in its opinion in this case pertinently said:

"A charge of conspiracy to bribe, with bribery as an overt act, may bring before the Court substantially the same questions as if the statute were directly against bribery.

"The political considerations of the relations between the people of the State and the National government are substantially the same in both cases.

"If for reasons of public policy, the constitutional power to legislate in the one case has been reserved, it seems inconsistent that it should have been exercised in the other." (Opinion, record pages 101-102)

Under Sec. 5511, Rev. Stat., bribery at a Congressional election was a crime and therefore under the first clause of Sec. 5540, Rev. Stat., a conspiracy to bribe at such elections was a conspiracy to commit an offense against the United States.

An indictment alleging the essential elements of the indictment in the case at bar would have stated a case under the first clause of Sec. 5440 Rev. Stat.

But by the repeal of Sec. 5511, Rev. Stat., making bribery at Congressional elections a crime, such acts ceased to be offenses against the United States, and at the same time, conspiracy to bribe ceased to be a crime under the first clause of Sec. 5440, Rev. Stat.

If Congress from broad considerations of public policy reserved its power over such a general class of cases and denied further jurisdiction over them to the Federal Courts, it cannot be said with any show of reason that the United States under the second clause of Sec. 37 is still invested with jurisdiction over identically the same subject-matter, or that Congress intended the second clause of that section to have such scope.

The United States cannot indirectly, under the peculiar frame of this indictment, punish acts which it has no power to punish directly either as bribery under Sec. 5511, or conspiracy to bribe under the first clause of Sec. 37. Rev. Stat. 5440.

It is submitted that to construe the second clause of Sec. 37 as vesting jurisdiction over cases of bribery at Congressional elections would be to frustrate the evident intent of Congress in its repeal of the legislation of 1870 and 1871, respecting bribery at Congressional elections, and to read into such clause, an intent which Congress never designed it to bear.

III.

THE UNITED STATES CANNOT MAINTAIN AN INDICTMENT FOR CONSPIRING TO DEFRAUD THE UNITED STATES BY THE BRIBERY OF ELECTORS AT A CONGRESSIONAL ELECTION IN THE ABSENCE OF A STATUTE DECLARING OR DEFINING THE RIGHTS OR FUNCTIONS, IN RESPECT TO WHICH THE UNITED STATES WAS TO BE DEFRAUDED AS ALLEGED IN THE INDICTMENT.

AUTHORITIES.

U. S. vs. Harris, 106 U. S. 629.

U. S. vs. Keitel, 211 U. S. 370.

U. S. vs. Mosley, 238 U. S. 383.

U. S. vs. Waddel, 112 U. S. 76.

The indictment is drawn on the theory that although the United States has no penal legislation on its statute book, making bribery a crime, yet in view of the fact that the election of a member of the National House of Representatives was involved, that the United States has thereby certain rights in the premises, among them, the right to have such an election "free and fair," or as related to the facts alleged in the indictment, to have an election free from the bribery of electors; that such right is violated by a conspiracy to bribe electors and hence the United States can maintain an indictment under the second clause of Section 37 of the Criminal Code of the United States on the theory that it has been defrauded.

Construing the indictment in the case of *U. S. vs. Gradwell, et al.*, No. 683, the lower Court said:

"The right of the United States in respect to these elections is a constitutional right to legislate or not to legislate as is deemed expedient or necessary. With this right, or with its exercise, no interference is charged in the indictment. But it is said that there is also in the Government a right to have its Senators and Representatives elected fairly and in accordance with law, even when Congress has not legislated to define the right. It is inaccurate to say that the indictment charges a conspiracy to defraud the Government of this right, nor can it be said that it is charged that the United States is obstructed in the performance of any active function in respect to this right. It may be said that this theoretical right is violated by doing what is inconsistent with it, and that a violation of the right is in a sense a fraud upon the United States." (Opinion, record page 99)

And further said in relation to the contention advanced by the Government:

"In fact, if a violation of a theoretical constitutional right of the Government not declared by statute is to be deemed a fraud, the conspiracy statute will be so broadened as to expand it beyond the scope of legislative foresight. Repugnancy to a reserved constitutional power of Congress to enact law can hardly be a practical test of fraud. Inconsistency with what Congress has power to protect, but has not protected, by law, or with reasons why it might legislate, if it saw fit, is not a satisfactory test of what shall constitute a defrauding of the United States under Section 37." (Opinion, record page 102)

In considering this question, it may be conceded at this point that the word "defraud" as used in Section 37 of the Penal Code of the United States has a broader meaning than it had at common law.

United States vs. Keitel, 211 U. S. 370; 29 Sup. Ct. Rep. 123.

And it may further be admitted under the decisions construing the second clause of Section 37 of the Penal Code of the United States, that the statute is sufficiently broad to embrace within its concept a conspiracy to assail or obstruct the administration or execution of a law of the United States, or to impair, or assail any administrative function of the United States; and it may be further said that the right or function of the United States which was to be violated need not necessarily be founded on any penal enactment, but that Section 37 may embrace a conspiracy to assail or obstruct the administration of a law of the United States not penal in its character.

But, it is the contention of the defendants, that some provision of positive law creating, defining or declaring the right which was to be violated must be invoked by the Government under the peculiar constitutional provision which governs legislation in this field in order to ground an indictment under Section 37 of the Penal Code of the United States.

The only two clauses of the Constitution which have any bearing on the general subject of Congressional elections are, Sec. 2 of Art. I, which provides that:

"The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

and Sec. 4 of Art. I, which provides that:

"The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof, but the Congress may at any time by law make or alter such regulations except as to the places of choosing senators."

Sec. 2, Art. I, has no application to the subject-matter of the indictment.

This section provides for the election of Representatives in Congress, fixes the qualifications of electors, and creates a constitutional right in citizens of the United States, having the qualifications pointed out by the section, to vote for Representatives in Congress.

This right is protected against conspiracies by Sec. 19 of the Penal Code.

U. S. vs. Mosley, 238 U. S. 383.

The alleged conspiracy was not leveled against this right or its exercise in any manner.

There is no allegation in the entire indictment that the conspiracy contemplated any action to prevent the registration of voters, the obstruction of any citizen in voting, or any acts to prevent a return or counting of the votes cast at the election.

Neither did the conspiracy contemplate the registration of persons not qualified, nor any plan to cause any person to vote who was not qualified thereunto.

What is alleged, is, that the United States was to be deprived of the "right to a free and fair election" by the bribery of electors.

In comparing the two sections of Art. I of the Constitution, it is manifest that the protection of the elections of Congressmen from bribery is a matter to be regulated under Sec. 4 of the Article in question,

James vs. Bowman, supra, -
Ex parte Nicholas, supra

and hence the rights of the United States in respect to the protection of such elections from bribery are to be determined by the provisions of this latter section.

Sec. 4 does not of itself create any juridical rights which can be made the basis of an indictment. It is a *grant of power* to regulate the conduct of the elections and the power is vested primarily in the States and ultimately in the Federal Government.

It is clear, as has been previously argued, from the language of Sec. 4 itself that Congress must take action before the United States is vested with any enforceable rights in the premises.

Congress is given the full power if it deems it necessary to safeguard the interest of the Nation to create or declare Federal rights and privileges in connection with the manner of conducting Congressional elections, power to protect the same from bribery, corruption or undue influence of any kind, and to make such administrative regulations for conducting such elections as it sees fit, but until it does take action each State in its own sovereign capacity has the right secured to it by the Constitution of the United States to occupy the particular field with legislation of its own.

The doctrine contended for by the defendants was lucidly stated in

U. S. vs. Waddell, 112 U. S. 76.

The case involved Sec. 3 of Art. IV of the Constitution which provides that,

“Congress shall have power to make all needful rules and regulations respecting the territory and other property of the United States.”

An information was brought under Sec. 5508, Rev. Stat., and involved an alleged conspiracy to intimidate and oppress a citizen of the United States in the exercise of his rights in regard to the public lands of the United States.

While a different section of the Constitution was involved, yet, the principle laid down by the court in this case, is applicable to the case at bar, the two provisions of the Constitution involved being similar in this that both are grants of power to make regulations.

The Court said:

“The right assailed, obstructed and its exercise prevented, or intended to be prevented, as set out in this petition, is very clearly a right wholly dependent upon the Act of Congress concerning the settlement and sale of the public lands of the United States. No such right exists, or can exist outside of an Act of Congress.”

The Government apparently admits that the right of the United States to an election free from bribery of electors must be defined or declared by statute in order to ground an indictment under Sec. 37, and it maintains that Sec. 19 is such statute.

The argument is that Sec. 19, which protects the right of a citizen of the United States to vote and to have

his vote counted should be extended to embrace conspiracies which aim at bribery.

The Government argues:

"There is a right that the vote shall have its proper weight and be placed in competition with those votes only which are fairly and rightfully cast. How would it benefit a citizen to have his vote cast and counted if its potency was entirely destroyed by bribery, fraud and intimidation of other voters." (Brief of the United States, page 12)

The argument then proceeds, after citing *Ex parte Yarbrough*, that if each citizen in the community has such a right, then the United States as a body made up of voters must necessarily possess the right under this statute, and hence the United States was to be defrauded of this right by the alleged conspiracy. (Brief of the United States, page 17).

The argument is open to fatal objections:

(a) The statute does not declare or protect rights of the United States, but expressly protects the free exercise of *rights of citizens of the United States* secured to them under the Constitution or laws of the United States.

(b) Whatever the rights may be, protected under this statute, such statute does not extend to the protection of elections from conspiracies to bribe voters.

The language of the Act is confined to the protection of citizens from conspiracies directly aimed to injure or oppress *them* in the exercise of Federal rights.

True it is that the statute goes beyond acts of violence in the protection it affords, but it is none the less true that it does not embrace conspiracies which may have the speculative, uncertain and indirect results as argued by the government.

Such remote consequences are not within the purview of Sec. 19 under any known principle of construction.

(c) The theory of the government that the United States as a corporate entity has the right supposed to be declared by this statute because the voters of the nation possess such rights individually is a theory not warranted by any principle of Constitutional law or by the decisions of any Court.

(d) *Ex parte Yarbrough* does not support the argument made by the Government.

It decided that Congress could constitutionally under Secs. 5508 and 5520 Rev. Stat. protect citizens in the right to vote from conspiracies contemplating violence; it also held that Congress possessed full power to protect elections from fraud, violence or bribery by appropriate legislation under Art. I, Sec. 4 of the Constitution, and the whole reasoning of the Court was directed to the establishment of these propositions.

It therefore appears from the language of Art. I, Sec. 4, that the United States is not invested by force of the Constitution with any present, legal, enforceable rights, relating to bribery of electors at Congressional elections, which it may enforce or protect in its own courts in the absence of Congressional legislation.

The only provisions of the statute law of the United States now in force relating to the election of members of the House of Representatives, are,

Sec. 25, Rev. Stat., providing for a uniform time of electing Representatives in Congress.

Sec. 27, Rev. Stat., providing for election by printed or written ballots and authorizing the use of voting machines, and

21 Stat. L., 733, Act of Jan. 16, 1901, Chap. 93, providing for a new apportionment of members and requiring the election to be by districts in each State.

Acts of June 25, 1910, Chap. 392, and of Aug. 19, 1911, Chap. 33, providing that candidates for Representatives in Congress shall make certain returns of election expenses.

The remaining provisions respecting elections are found in Chap. III of the Penal Code entitled, "Offenses Against the Elective Franchise and Civil Rights of Citizens," and include Sec. 19 before referred to, and Secs. 22, 23, 24 and 26, which make unlawful interference by the military forces of the United States with certain elections.

This being the condition of Federal legislation under Art. I, Sec. 4 of the Constitution, it is clear that the entire regulation and control and protection of the election of Representatives in Congress, except as above provided, is now vested in the several states.

No statute of the United States defines or punishes bribery of electors, and no one can reasonably contend that this Court has jurisdiction under any statute of the United States to punish bribery at a Congressional election.

Such acts may be crimes against the State of Rhode Island, but they assuredly do not constitute crimes against the United States by force of any provisions of the Penal Code of the United States. No right of the United States as declared and defined by any provision of its criminal law has been violated.

More than this, it further appears that the United States has now no administrative function of any character which it is by law entitled to perform or execute at a Congressional election; no Federal officer can lawfully interfere at a Congressional election with the conduct thereof, and neither are the election officers of the state brought under Federal supervision by force of any statute of the United States.

The entire administration relating to the election of a Congressman is now as exclusively vested in state officers as are the elections of state or municipal officers.

Wherein, therefore, can it be said that the United States has any legal, enforceable, right or privilege to a "fair and free election" as the phrase is used in the indictment, when such right is not declared by the Constitution, or by any statute of the United States, is not created or implied by the existence of a body of administrative laws or regulations of the United States, and is not defined by any criminal statute of the United States, giving the United States courts power to punish as crimes such acts as are alleged in the indictment?

If there is no function which it is the duty of any officer of the United States to carry out, if the United States under the law as it now stands, has no power to interfere in an election to prevent bribery, nor to repress the same by

criminal process in its courts, where is the right of the United States as now contended for, and wherein has it been defrauded, and of which legal right has it been deprived which it may protect in its courts?

The answer to these questions is plain.

Under Art. 1, Sec. 4 of the Constitution, the several states are now the source of all rights respecting the protection of Congressional elections from bribery of electors.

The states create the Congressional Districts, create and administer the machinery whereby the elections are conducted, keep the peace at the polls, define and punish the crime of bribery, and by various methods protect the purity of the ballot, for Congressional as well as state elections.

The rights, therefore, which were to be violated as alleged plainly appear to be rights created by and vesting in the States and not in the Federal Government.

In further consideration of the question whether Sec. 37 can be construed to embrace rights not defined or declared by statute under Art. I, Sec. 4 of the Constitution, the inevitable results of such a construction may properly be adverted to.

In at least two aspects such a theory of the scope of the statute would expand it far beyond "legislative foresight", and cause it to apply to matters never in the contemplation of Congress.

Whatever may be the meaning of the term, "right to a fair and free election," which is the foundation of the indict-

ment, and against which the alleged conspiracy was aimed, its meaning is not fixed by the common law, nor by any statute of the United States or of the State of Rhode Island.

If it means a right defined by a State statute protecting elections from bribery, then the Government is in the position of attempting to enforce rights arising under a state statute not adopted by Congress, a point discussed under point IV, post, page 46 herein.

If it is a right not dependent for definition upon, or circumscribed by State statutes, then it is of such wide import that it cannot be defined in any manner since there is no Federal statute on the subject.

Any act which might be deemed detrimental to the fairness of an election, or which influenced unduly the action of an elector may be said to prevent a "free and fair election".

Bribery is not the only method of unduly influencing the action of an elector, or the only method by which an election can be corrupted or debauched, and under the wide concept of the rights of the United States embraced in the phrase "fair and free election" what acts unduly influencing electors would fall within and what without Sec. 37 could only be determined by a long course of judicial legislation.

Again, if Sec. 37 be construed to protect Congressional elections from acts prejudicing the freedom or fairness of the election, it necessarily follows that the statute also extends to the protection of the executive and the judicial branches of the Government.

Nothing can be found in the statute to limit the application thereof to the election of members of the legislative branch if the theory of the Government in this case be sound.

The United States has as great an interest in, and may with equal force to be said to have as great right to the fair and free election of a President, or presidential electors as it has to the free and fair election of Representatives in Congress.

It is true the method of election is different, but the rights of the United States in respect to the election of a President can be no less nor of a different character, if the theory of the Government is correct, under Sec. 1, of Art. II of the Constitution, than are the rights under Sec. 2 of Art. I. Both sections provide for an election by certain agencies to fill certain branches of the Government. A conspiracy to procure the election of a certain candidate to the Presidency by acts which impair the fairness or freedom of the election, as those terms are used in the indictment, would equally with such a conspiracy as it set out in the indictment, be a conspiracy to defraud the United States, if Sec. 37 has the wide scope contended for by the Government.

The logic of the position of the Government obliges them to maintain that Sec. 37 was intended to go far beyond the protection of the operations of the organized government, from conspiracies to impair or assail legally defined functions, and to include in its scope any and all acts, none of them defined, which might in any way be considered to affect unduly the freedom or fairness of the operation of the agencies pointed out by the Constitution to create the great departments of government.

It is inconceivable that Congress ever designed the second clause of Sec. 37 to reach and punish such acts, in a field so wide and important, and presenting questions so different in kind from those falling in the category of acts of fraud.

U. S. vs. Harris, 106 U. S. 629.

It is submitted, therefore, that there being no legislation, penal or administrative, vesting the United States with any control or authority over Congressional elections in respect to bribery or declaring or defining its rights in the premises, the United States was not assailed in the exercise of any present legal and enforceable rights which it was entitled to protect from violation by alleged acts set forth in the present indictment, and hence, the indictment fails to show that the United States was to be defrauded in respect to anything which it was legally entitled to protect under Sec. 37 of the Penal Code of the United States.

IV.

THE UNITED STATES CANNOT MAINTAIN AN INDICTMENT FOR CONSPIRING TO DEFRAUD THE UNITED STATES BASED ON THE ALLEGATIONS OF A CONSPIRACY TO VIOLATE THE PENAL LAWS OF THE STATE OF RHODE ISLAND PROHIBITING BRIBERY AT ELECTIONS HELD WITHIN THAT STATE.

AUTHORITIES.

Cooley vs. Board of Port Wardens, 12 How. 299.

Huntington vs. Attrill, 146 U. S. 657.

Pettibone vs. U. S., 148 U. S. 197.

Sho-Shone Mining Co. vs. Rutter, 177 U. S. 505.

Ex parte Siebold, 100 U. S. 717.

Swin vs. Breedlove, 2 How. 29.

U. S. vs. Morrissey, 32 Fed. 147.

U. S. vs. Reese, 92 U. S. 241.

The indictment not only sets up a conspiracy to defraud the United States by the bribery of electors, but asserts as a foundation of the power to indict the defendants, that the defendants conspired to defraud the United States by violating the laws of the State of Rhode Island relating to bribery at elections.

One theory of the indictment is that by a conspiracy to bribe electors at a Congressional election, the United States was to be fraudulently deprived of the protection of the State laws enacted to prevent the bribery of electors at Congressional as well as at state elections.

The first and eighth counts are drawn on this theory.

The first count (record pages 2-3), alleges that the defendants

"did conspire * * to defraud the United States in the manner * * now here set forth; * * * * * Said defendants were to defraud the United States * * by unlawfully and corruptly prejudicing and hindering the enforcement and administration of certain laws of the State of Rhode Island, looking to the conduct of elections in that State, including elections at which Representatives in the Congress of the United States were chosen * *, in that they were to pay to each of a great number, to wit, three hundred of the voters qualified to vote at said election for a Representative in Congress, a sum of money, in consideration of his having given his vote, at said election, for a candidate for Representative in said Sixty-Fourth Congress * * said laws of said State of Rhode Island then * * being, * *, so framed as to prevent such payment of money to such voters, and the United States then having the right to have said laws enforced and lawfully administered in the premises, and have each of said voters left to exercise his right to vote for such Representative free from bribery and corruption."

As has been pointed out, the use of the words "prejudicing and hindering the enforcement and administration of certain laws," is misleading and inaccurate, as under the facts set forth in the body of the indictment, the conspiracy was to bribe electors and nothing more.

There is no allegation in this count, or elsewhere in the indictment, nor are any overt acts set forth, showing that the defendants were acting or were to act as officers of the State of Rhode Island in the administration of any of the laws of the State of Rhode Island, or that any conspiracy was entered into to affect, assail or obstruct the enforcement and administration of any election laws on the statute book of the State of Rhode Island, looking towards the conduct of elections or the protection of elections from bribery or corruption.

The eighth count (record pages 57-59) is squarely based on the allegation that the United States was to be defrauded by a conspiracy to bribe electors in violation of a law of the State of Rhode Island, making bribery of electors at any election a crime.

This count sets forth (record pages 58-59) in full, Section 3, Chapter 20 of the General Laws of Rhode Island, 1909, which was in force at the time of the alleged conspiracy and which provided as follows:

"Sec. 3. Every person who shall directly or indirectly offer or agree to give to any elector or to any person for the benefit of any elector any sum of money or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote at any election in this State, or by way of reward for having voted or withheld his vote, or who shall use any threat or employ any means of intimidation for the purpose of influencing such elector to vote or withhold his vote for or against any candidate or candidates or proposition pending at such election, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment of not less than six months nor more than two years, or

by both, such fine and imprisonment in the discretion of the court, and no person after conviction of such offense shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office; and no evidence given by an witness testifying upon the trial of any charge of bribery shall be used against the person giving such evidence."

The position of the Government in respect to these allegations of the indictment is apparently this: the law of Rhode Island recognizes and creates a right to have an election of a Representative in Congress free from bribery by the force of the statute which denounces bribery of an elector at such an election a crime; such right was violated by the alleged conspiracy to bribe, and that the statute being passed to protect Congressional as well as State elections, it was passed in the interest of the United States, and confers certain rights on the United States of which the United States was to be defrauded by the alleged conspiracy to bribe; therefore, the United States can enforce and protect such right from violation under the second clause of Section 37 of the Criminal Code.

It is not enough to say that the United States under this indictment is only seeking to enforce its rights under Sec. 37 of the Penal Code.

It is evident under the frame of the indictment that the State statute is the foundation of the right which the government alleges was to be assailed by the alleged conspiracy as set forth in the two counts, and unless these rights which were created under State statutes confer a right on the United States in respect to the bribery of electors at a Congressional election, the indictment in this aspect must be pronounced bad.

Prima facie, under the ordinary doctrines governing the powers of the States and their relations to the United States, if a State statute, penal in character, on a subject over which the state has power to legislate is violated, the right which is infringed is the right of the state sovereignty which enacted the legislation, and that sovereignty alone has power to punish a violation thereof. Or to adopt the theory of the indictment, to protect whatever rights may arise under such statutes.

"Crimes and offenses against the laws of any state can only be defined, prosecuted and pardoned by the sovereign authority of that state; and the authorities, legislative, executive or judicial, of other states take no action with regard to them, except by way of extradition, to surrender offenders to the state whose laws they have violated, and whose peace they have broken."

Huntington vs. Attrill, 146 U. S. 657; 13 Sup. Ct. Rep. 224.

The decision of the Court in *Pettibone vs. United States*, 148 U. S. 197; 13 Sup. Ct. Rep. 542, is extremely pertinent in its application to the facts in this case.

In that case, defendants were indicted under Rev. Stat. 5399 and 5440, for conspiring to obstruct the administration of justice in the Federal Courts, and it was charged that the defendants conspired to use force and fraud to interfere with the relation between an employee and his employees and that they did so pending an injunction from the Circuit Court of the United States.

The acts which it was charged the defendants conspired to commit were offenses against the laws of the State of Idaho, but were not offenses against the United States.

The Court said:

"The defendants could neither be indicted nor convicted of a crime against the state in the Circuit Court, but their offense against the United States consisted entirely in the violation of the statute of the United States by corruptly, or by threats or force, impeding or obstructing the due administration of justice. If they were not guilty of that, they could not be convicted; and neither the indictment nor the case can be helped out by reference to the alleged crime against the state, and the defendants be punished for the latter under the guise of a proceeding to punish them for an offense which they did not commit."

Under what theory, therefore, of the relations between the state governments and the federal government can it be said that the Federal government has the right and power in the absence of a specific statute adopting State legislation to lay hold of a State statute as the foundation of a criminal action in the courts of the United States?

In what manner or by what process did the rights arising under a state statute adapted and intended to be enforced in the State tribunals become transmuted into legal rights of the United States, which could be protected from violation in the Courts of the United States under Section 37?

It is argued that the states are acting in some sort as the agents of the United States in enacting and enforcing statutes designed to prevent bribery at Congressional elections, by reason of the language of Section 4, Article I of the Constitution of the United States. (Brief of United States, Page 7)

While it may be true that in the absence of Congressional action, the states owe certain duties to the United States to protect Congressional elections, and the United

States has the right to such protection, yet this is true only in the sense that the rights and duties are political in their nature. They are not judicial rights in any sense which can be made the basis of legal action.

Further, that while it is true that State officials may act as the agents of the Federal government in various matters as was pointed out in the *United States vs. Jones*, 109 U. S. 531; and while the United States may adopt State statutes in certain fields of legislation, as was pointed out in *Cooley vs. Board of Port Wardens*, 12 How. 299, yet an examination of the instances where this has been done shows that such a departure from the ordinary methods of administration and legislation has always been by force of a specific statute of the United States.

The proposition underlying the counts in question is of a different nature.

The proposition must be that in the enactment of State legislation the legislatures of the various States are acting as legislative agents for the United States, and for its benefit, so that whatever laws they pass in reference to the protection of Congressional elections enure to the benefit of the United States and create rights which the United States can avail itself of.

An examination of the clause in question and the construction which has been given it demonstrates the unsoundness of the contention.

As has been shown in the previous portions of this brief, it was thought better to leave the regulation and protection of elections primarily in the hands of the states, as being the best acquainted with the needs of the people

of the various localities in this respect. It was designed to vest in the States some measure of self government in the election of their representatives.

The Government cites *Ex parte Siebold*, 100 U. S. 371 (Brief of United States, page 8), in support of its theory.

The precise point involved was the constitutional power of Congress to enact Sec. 5515, Rev. Stat., which made criminal violations of duty by election officers at Congressional elections including state officers as well as officers of the Federal Government.

The statute was held constitutional as within the power of Congress to regulate elections under Art. 1, Sec. 4 of the Constitution in any way it saw fit or expedient so to do.

The case does not hold that in the event that Congress reserves its powers, and in the absence of statute adopting the same, that state statutes, affecting Congressional elections found Federal rights, which the United States can protect in its own Courts.

The capacity in which the state legislatures act under Sec. 4, Art. I of the Constitution was clearly put by Madison in that portion of his argument before the Virginia Convention, quoted *supra* page 5 herein. He said:

“And considering the state governments, and the general government as distinct bodies, acting in different and independent capacities for the people it was thought the particular regulations should be submitted to the former and the general regulations to the latter.”

In other words, the local governments in their sovereign capacities and not as legislative agents of the United States

were left in free and complete control unless Congress by rule should see fit to occupy the field.

To say that the laws which have been passed by the states in regard to Congressional elections have been passed for the benefit of the United States to such an extent that the United States can lay hold of these statutes without action by Congress and enforce such statutes in its own courts would be to frustrate the very evident intent of this constitutional provision, and vest in the United States Courts a jurisdiction, which is now left to the States by the declared policy of Congress.

The doctrine that the states of the Union have any legislative powers conferred on them by the Constitution to legislate for the United States was emphatically denied by Chief Justice Marshall.

In the case of *Wayman, et al. vs. Southard, et al.*, 10 Wheat. 1, the Chief Justice said (page 48:)

"If Congress cannot invest the Courts with the power of altering the modes of proceeding of their own officers, in the service of executions issued on their own judgments, how ill gentlemen defend a delegation of the same power to the state legislatures? The state assemblies do not constitute a legislative body for the Union. They possess no portion of that legislative power which the constitution vests in Congress, and cannot receive it by delegation."

But even if it could be maintained that a theoretical right was vested in the United States by the action of the State legislatures in the absence of specific legislation adopting such legislation, yet the question is still to be answered, did Congress intend by Section 37 to give the United States power to enforce such rights whatever they are?

Did Congress intend when it enacted Section 37 in its present form to bring into the Courts of the United States for adjudication rights founded on State statutes.

The doctrine of this court is clear that adoption of state statutes as the foundation of Federal rights will not be implied, but can arise only by force of express enactment.

In *Sho-Shone Mining Co. vs. Rutter*, 177 U. S. 505; 20 Sup. Ct. Rep. 726 (1900) a statute of the United States provided that suits involving certain mining claims might be begun in a "court of competent jurisdiction." It was contended that as all the claims were founded on patents or grants from the United States that it was a case arising under the laws and Constitution of the United States, and that the statute was enacted under the grant of power to make "regulations * * respecting the territory or other property of the United States."

The Court held that the courts of the United States had no original jurisdiction in the case, as the statute did not expressly so provide.

The court said:

"The recognition by Congress of local customs and statutory provisions as at times controlling the right of possession does not incorporate them into the body of Federal law. Section 2 of Article I of the Constitution provides that the electors in each state of members of the House of Representatives 'shall have the qualifications requisite for electors of the most numerous branch of the state legislature,' but this does not make the statutes and constitutional provisions the various states in reference to the qualifications of electors parts of the Constitution or laws of the United States."

As illustrating the extreme caution with which the Supreme Court has dealt with even express legislation, which conferred powers on the Federal Courts to adopt and enforce the laws of the states, the case of *Swinn vs. Breedlove*, 2 How. 29, may be cited.

In this case a law of Mississippi made a sheriff liable for false return for moneys collected and not turned over, and also provided for a penalty for such failure to comply with his duties in these respects, which penalty could be enforced by summary action or by indictment. A marshal of a United States court in Mississippi was proceeded against in the Federal Courts both for the amount not turned over and for the penalty, and it was argued in behalf of the government that, by force of Act of Congress, 1829, called the Process Act, whereby the laws of the several states in regard to process were made the rule for the Federal Courts, the penalty could be collected.

The court refused to enforce the penalty, saying:

"The recovery of the penalty could with quite as much propriety have been on conviction by indictment as on summary motion; and in neither mode can it be plausibly contended that the courts of the United States could inflict the penalty on its marshal. * * This being an offense against state law, the courts of the state alone could punish its commission; the courts of the United States having no power to execute the penal laws of the individual states."

Not only is the Court asked to construe Section 37 to cover a case where no Federal right is declared by statute, but the Court is also asked to extend the operation of the statute to include State statutes within its scope and thus

bring the Federal Courts into a field of jurisdiction where under the present state of legislation, the states are exercising substantially full powers over the elective franchise.

That a statute will not be construed to bring about such a result in the absence of express enactment, we have already pointed out in this brief.

The legislation of Congress in respect to the adoption of state laws, while not conclusive, is persuasive that the doctrine contended for by the defendant is correct.

Under Secs. 5511, 5512 and 5515, Rev. Stat. Congress, by express enactments did, in 1870, adopt certain state statutes relating to the casting, counting, preservation and return of votes at a Congressional election, as part of the Criminal Code of the United States, by providing that a violation of the duties imposed by state laws on state officers were likewise crimes against the United States.

Congress was of the opinion that express action was necessary on its part to punish such derelictions of duty on the part of state officers, even where a Congressional election was involved, before the United States was invested with any rights over the subject matter.

It is to be noted that the sections of the Revised Statutes under consideration did not go to the length of adopting state statutes relating to bribery or corrupt practices, but specifically provided what state statutes were to be deemed laws of the United States for the purpose of punishment thereof in the Federal Courts.

Miller, J., in his opinion *In re Coy*, 1276-9—731, thus characterized the situation brought about by these provisions.

"This anomalous condition makes the question of the applicability of the laws of Congress on this subject under the state statutes for the regulation of the casting, returning and counting of votes, somewhat complex."

This "anomalous condition" caused much perplexity led to conflicts of authority, and even the constitutionality of these provisions was doubtful. (See dissenting opinion of Mr. Justice Field in *Ex parte Siebold*, 100 U. S. 717).

And Mr. Justice Brewer in *United States vs. Morrissey*, 32 Fed. 147, referred to Sec. 5515 as on "the border line of Federal jurisdiction."

Congress rectified the situation when it repealed these sections in 1894.

The court is now asked to validate an indictment based on the theory that the laws of Rhode Island in respect to bribery of electors are in reality and essentially a part of the Federal Penal Code and vest in the United States *rights* which may be protected by indictment, in defiance of the fact that there is no Federal statute covering these alleged offenses, no Federal statute adopting such state laws as a part of the Federal Code, and in disregard of the declared policy of Congress to terminate the "anomalous condition" presented under the election laws of 1870, and to prevent discord and conflict between the states and the Federal government.

Under the theory on which the indictment is drawn, this anomalous condition is to be revived under Sec. 37 in a more aggravated form than existed under the comparatively limited scope of the statutes of 1870 and 1871 since the penal laws drawn into the Federal courts under this construction would embrace at least a great many of the provisions of the corrupt practice acts passed by the states in relation to elections.

It would sweep into the Federal courts for consideration and punishment violations of a great variety of state legislation which has never been adopted or even considered by Congress, and which has been enacted without contemplation of Federal interference.

Another and necessary question is what state statutes are thus included within the scope of Sec. 37?

Does the right to a fair and free election include all the statutes passed by the states which relate to elections held "within the state", and, if not, where is the line to be drawn?

Does the proper construction of Sec. 37, for instance, embrace a conspiracy to violate the state statutes regarding bribery, and not a conspiracy to violate a statute prohibiting the sale of liquor on election day, an allegation contained in the indictment in the case of *U. S. vs. Gradwell, et al.*, No. 683, now pending in this court?

All of these questions must be answered by the courts in the absence of legislation by Congress.

The court would be obliged to legislate in each case and decide without statute, rule or precedent, what the right was, define the content thereof, and decide whether or not the state statute was passed to protect it.

The situation thus presented is aptly described by this court in *U. S. vs. Reese*, 92 U. S. 241.

"It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the court to step inside and say who could be rightfully detained and who should be set at large. This would to some extent substitute the judicial for the legislative branch of the government."

The consequences of such an interpretation of Sec. 37 are so patent that it is unnecessary to labor the point further.

It is submitted, therefore, on principle and authority that the rights, if any, which have been infringed are rights created by the State of Rhode Island under Art. I, Sec. 4 of the Constitution of the United States, which rights are solely rights of the State of Rhode Island, and for the infringement whereof the State of Rhode Island alone has now jurisdiction to punish.

V.

THIS INDICTMENT IS NOT SUSTAINED BY THE AUTHORITY OF ANY DECISIONS IN THE COURTS OF THE UNITED STATES.

The indictment is evidently framed to bring it within the doctrine laid down in

Haas vs. Henkel, 216 U. S. 462; 30 Sup. Ct. Rep. 249.

Curley vs. United States, 130 Fed. 1.

U. S. vs. Aczel, 219 Fed. 917, (D. C. of Indiana) and

Aczel vs. U. S., 232 Fed. 652 (C. C. A. 7th Circuit).

Assuming that these cases hold that Section 37 of the Penal Code of the United States is broad enough in its scope to include a conspiracy to defraud the United States by a scheme to impair its administrative functions, and the exercise thereof by its officers and agents, yet an examination of the cases shows that the present indictment is not within the doctrine of these authorities.

Haas vs. Henkel arose under habeas corpus proceedings. Haas and others, one being a clerk in the Bureau of Statistics of the Department of Agriculture of the United States, were indicted in the District Court for the District of Columbia for conspiracy to defraud the United States, and also for conspiracy to commit an offense against the United States. Removal proceedings were instituted in the District Court for the District of New York. The defendants petitioned for a writ of habeas corpus on the ground that the indictments did not set forth any offense against the laws of the United States. The District Court refused the writ, and the case was taken to the Supreme Court on appeal from such order.

The count for conspiracy to defraud the United States charged a conspiracy on the part of the defendants, one of them, Holmes, being in the service of the United States, to obtain advance information of the condition of the cotton crop in the United States from the Bureau of Statistics, and to obtain from Holmes false and fraudulent reports in regard to the cotton crop, these reports to be used by the conspirators for the purposes of speculation.

The court held:

(1.) That although the count did not allege a direct pecuniary loss to the government, yet the result of the operations would be a "real financial loss."

(2.) That Section 37 is broad enough to include a conspiracy to impair or defeat any lawful function of any department of the government, and that any conspiracy which was calculated to impair the efficiency of the operations of the department of agriculture would be a conspiracy to defraud the United States under this rule.

The indictment in *Curley vs. U. S.* was in three counts. The second and third counts set forth a conspiracy to commit an offense against the United States, and set forth the specific statutes which were to be violated.

The first count alone charged a conspiracy to defraud the United States under Sec. 5440 Rev. Stat.

The means by which the fraud was to be accomplished and the object of the conspiracy were set forth in detail in the indictment.

It was alleged that one of the defendants was desirous of obtaining an appointment as a letter carrier in the postal service of the United States, and that he and Curley entered into a conspiracy whereby Curley was to personate the person desiring the appointment at a civil service examination, was to answer the questions propounded at the examination, and was to sign the examination papers in the name of such other person, thereby signing and presenting to the civil service examiners fraudulent papers.

The point was taken on demurrer and after conviction, that the indictment did not set forth an offense against the United States for the reason, among others, that the government was not defrauded of any property rights, or of anything of any pecuniary value.

The court held that a pecuniary loss would result from the conspiracy, and further stated that Sec. 5440, was broad enough to include a conspiracy to cheat and deceive the agents of the United States government in respect to a service which it was the duty of the government to perform, and that the regulations providing for admission to the civil service of the United States, which it was the object of the conspiracy to circumvent, were founded upon a law of Congress.

The court stated in broad language that any conspiracy to impair or obstruct the administration by the government of any of its laws, was covered under Section 5440 (now Section 37).

The case of the *United States vs. Aczel* arose first on demurrer to an indictment found in the District Court of Indiana and came up in the Circuit Court of Appeals for the 7th Circuit, after conviction. Under this indictment a large number of persons were charged with a violation of Secs. 19, 37 and 215 of the Penal Code of the United States.

The District Court construed Sec. 19 as covering the case of a conspiracy to threaten or intimidate any person in exercising his right to vote for a Representative in Congress, and the greater part of the opinion was devoted to a consideration of this aspect of the case.

The second count of the indictment was based on Section 37 of the Penal code of the United States.

The count set forth that the defendants conspired to commit a wilful fraud upon Art. I, Sec. 2 of the Constitution of the United States, and to commit a wilful fraud on the law of the United States, to wit; Upon an act of Congress

providing for the method of conducting the nomination and election of United States senators, and set forth in detail of what the alleged frauds consisted. It appeared that the conspiracy contemplated causing and procuring a very large number of persons who did not have the qualifications requisite for electors as provided in Art. I, Sec. 2 of the Constitution of the United States to vote at a Congressional election. Furthermore, the count alleged that a large number of persons were to vote and did vote under the names of other persons, charging impersonation and repeating on an enormous scale.

In effect, the indictment charged that the conspiracy was to defraud the United States of a lawful election by causing persons to vote who did not possess the qualifications of electors as provided in Art. I, Sec. 2 of the Constitution of the United States and the laws of the United States respecting the qualification of electors of a senator of the United States, and by causing persons to vote on the names of other persons who were qualified electors.

It is to be observed that the second count of the indictment in the Aczel case did not anywhere allege that the election was to be debauched or corrupted by the bribery of electors, as set forth in the indictment in the present case, or by any other means than by causing persons to vote who were not qualified electors.

This being the charge of the indictment, the language of the District Court, in overruling the demurrer, must be taken to refer to the alleged means, set forth in the body of the count, whereby the United States was to be defrauded by acts in violation of Art. I, Section 2 of the Constitution of the United States, and therefore the statement of the

court, that a conspiracy to corrupt and debauch voters at an election, where a member of Congress is to be elected is a crime cognizable in the Federal Courts, must be taken as holding only that a conspiracy to vote and cause to be voted at a Congressional and Senatorial election, persons not qualified to vote under Art. I, Sec. 2 of the constitution of United States is an indictable offense under Sec. 37.

The opinion of the District Court on demurrer nowhere holds that the bribery of a qualified elector to vote for a candidate for Representative in Congress is a crime of which the United States courts have now jurisdiction, or that the United States, under the law as it now stands, has any legal right, privilege or function in respect to a "fair and free election of a Congressman," which is violated by the bribery of electors.

We have heretofore adverted to the point that the indictment in the case at bar nowhere sets out intimidation or obstruction of any person in his right to vote, nor is there any pretense that the indictment states any conspiracy to cause unqualified persons to vote at the election on November 3, 1914, for a candidate for Representative in Congress. In fact, the indictment expressly states in several counts that the voters who were to be corrupted and debauched were qualified electors.

It is very significant that this decision in the District Court on the point in question, namely; the jurisdiction of the Federal Courts over a charge of conspiracy, under Sec. 37, to corrupt and debauch an election of a Congressman by causing unqualified persons to vote, was not sup-

ported by the Circuit Court of Appeals of the Seventh Circuit to which court the defendants prosecuted a writ of error after conviction; 232 Fed. 682.

The only point raised on the writ of error in the Circuit Court of Appeals was to the sufficiency of the indictment. The court held the first count sufficient, which charged a conspiracy under Sec. 19, to oppress and intimidate citizens of the United States in the exercise of their right to vote, and refused to consider the sufficiency of the other counts including the second, which was based on Sec. 37, saying:

“Under these circumstances, the first count being sufficient to sustain the judgment of the District Court, the other counts need not be considered.”

The cases of *Haas vs. Henkel* and *Curley vs. the United States* may be taken to establish the doctrine that Section 37 of the Penal Code embraces not only conspiracies to defraud the United States of property, but also includes conspiracies to assail or impair the administration of a law of the United States, or to deceive any agent of the United States in the exercise of an administrative duty or function conferred upon him by law.

The claim may be advanced by the Government that as Representatives in Congress are officers of the United States under the authority of *Lamar vs. United States*, 241 U. S. 102, and as Sec. 37 has been construed to cover a conspiracy to deceive an officer of the United States that therefore a conspiracy to elect a person a Representative in Congress by bribery is a conspiracy to deceive officers of the United States, and hence the indictment falls within the scope of Sec. 37.

The case of *Lamar vs. United States* was not decided under Sec. 37, but under Sec. 32 of the Penal Code which makes it an offense to falsely personate an officer of the United States and under the broad language of the statute, it was held that a Representative in Congress was an officer of the United States within the meaning of the statute.

The court did not rule that a Representative in Congress was an officer of the United States in the meaning given that term in the Haas and Henkel, and Curley cases, construing Sec. 37, nor did the court overrule its decision in *Burton vs. United States*, 202 U. S. 344, wherein it was held that in a constitutional sense, a Senator was not an officer holding this place "under the Government of the United States."

Whether a Representative in Congress is an officer of the United States as that term is used in various statutes of the United States, it is not necessary in the present aspect of this case to determine.

The precise question here is this: Does Sec. 37 as construed cover a case where the House of Representatives was to be deceived by a conspiracy?

No case can be found under Sec. 37, which supports such an extreme construction.

All the cases involved were cases where the administrative functions of the United States were involved, or where persons who were agents of the United States in executing a law of the United States were to be deceived.

The essential difference between a conspiracy to impair the administration of a law of the United States, or

to deceive an agent of the United States charged with the administration of a law of the United States, and one which goes to the action of electors in choosing a member of the legislative branch of the government is so clear that the doctrine of *Haas vs. Henkel*, and *Curley vs. United States* cannot be correctly said to apply to the indictment in question.

Under the construction contended for by the government, the statute must include not only conspiracies to defraud the United States by the corruption of electors of either branch of the national legislature, but would also include conspiracies to affect by any fraud whatsoever the election of Presidential electors or their action after appointment in respect to the election of a President.

That Congress could not have intended when it passed Sec. 37 in its present form to include such a class of conspiracies has already been argued under point III of the brief, Page 43 herein, and the argument need not here be repeated.

Another aspect of the extreme construction urged by the Government should be noticed.

One basis of the claim of the Government is that the House of Representatives is a body composed of officers of the United States, and that as officers of the United States were to be deceived by the election of a member by bribery of electors, the doctrine of *Haas vs. Henkel* and the *Curley Case* applies.

The gist of the offense in this view is the deception to be practised on the House of Representatives. It therefore follows that the statute under this theory embraces not

only conspiracies to deceive by means of bribery of electors, but must extend to all conspiracies to influence the House or Senate in their action by deception or other means amounting to fraud.

That the construction contended for carries with it necessarily such a result is sufficient to refute the correctness of such a construction without further argument.

At this point, and as involved in the claim that Sec. 37 embraces a conspiracy to deceive the House of Representatives, may be noticed the point taken on the brief of the Government, (Brief of the United States, pages 30 and 31) that there was a plan to defraud the United States of its money: That is, the annual salary of seventy-five hundred dollars paid to a Congressman. This is only an incidental result of the conspiracy as is shown by the wording of the third count on which the Government relies, (record page 19) the contention of the Government being that the conspiracy was intended to deprive the United States of the right to a fair and free election.

Moreover, in order to sustain this contention Sec. 37 must be construed to cover the case of deception practiced on the House of Representatives, a point discussed above.

The reasoning of the lower Court in disposing of this point seems conclusive:

"The United States cannot be defrauded by the payment of a salary to one whose right to a seat is formally established by the House." (Opinion, record page 45)

Further, differentiating *Haas vs. Henkel* and *Curley vs. United States* from the case at bar, it appears that in each

of the cases cited, the court was able to lay hold of some specific statute of the United States on which was founded the right or function of the United States in the exercise of which it was to be defrauded.

No case has been discovered which holds that an indictment can be sustained under Sec. 37, charging a conspiracy to defraud the United States in respect to a right or function where such right or function was not founded directly, on some statute of the United States creating or defining such right, or function.

In the case at bar, no such statute can be pointed out and for this reason, the doctrine of the *Haas vs. Henkel* and *Curley vs. United States* cases are not applicable.

Further than this, in each case except the Aczel case, some administrative function of the government was to be assailed or impaired by the conspiracy.

None can be pointed out in the case at bar.

Furthermore, the cases, except the Aczel case, involved a false and fraudulent representation either to or by some agent of the United States executing a law of the United States, or the effect of the conspiracy was to deceive an agent of the United States charged with the administration of a law of the United States.

No such act is charged in the case at bar in the allegations of the indictment under consideration.

The decision in the Aczel case on the demurrer to the indictment in the District Court is not in point, even if its

correctness be assumed, which assumption is open to grave doubt as far as the count for conspiracy under Sec. 37 is involved.

This court is now asked to broaden the scope of Sec. 37 far beyond the construction given the statute in *Haas vs. Henkel* and *Curley vs. United States*, and to decide that it covers the case where no administrative function of the United States is assailed, but where it is alleged there was a fraud in the creation of one of the great departments of the government, namely, the creation of the House of Representative, and further, to decide that it covers a case where the supposed rights or functions of the United States alleged to be assailed or impaired were not created, established or defined by any Federal statute, but in so far as statutory regulation is concerned or relied on, were solely matters of State regulation under State statutes.

Not only would such an extension of the statute be unwarranted by the ordinary rules of construction, but the consequences of such a construction would be mischievous in the extreme, as has been pointed out *supra*.

The Federal Courts would be either in the position of enforcing the vast variety of State statutes, which have never been adopted or even considered by Congress relating to elections, or else would be obliged to legislate in each case and decide without statute, rule or precedent what the Federal right was, and define the content thereof and its scope, in the absence of Federal enactment defining and delimiting the interest of the United States.

In view of the foregoing considerations, it is submitted that the indictment is not supported by any authority in point, and is not within the doctrines laid down in *Haas vs. Henkel* and *Curley vs. United States*.

VI.

CONCLUSION.

It is submitted in conclusion that:

1. Sec. 37 of the Criminal Code of the United States does not and was not intended to cover the case of a conspiracy to bribe electors at a Congressional election.

2. That bribery or conspiracy to bribe an elector to vote for a Representative in Congress are not offenses against the United States, but that on the contrary Congress has divested the United States courts of the jurisdiction which they once had on the subject and has relegated the definition and the punishment of such crimes against the elective franchise to the several States which now severally have exclusive jurisdiction over bribery and conspiracy to bribe at a Congressional election.

3. That this prosecution is an attempt indirectly, by a forced construction of Sec. 37 of the Criminal Code, to obtain a jurisdiction in the courts of the United States to punish an alleged offense against the elective franchise, of jurisdiction over which Congress has divested the Federal courts, with the intent that the States should resume their functions as the primary guardians of the purity of Congressional elections under Art. I, Sec. 4 of the Constitution of the United States.

4. That Congress has not by statute vested the United States Courts or any Federal officer with any present right of control, regulation, or protection, administrative, executive or penal, over Congressional elections, in respect to the matters charged in the indictment, and that,

therefore the United States has not been deprived of the exercise of any legal right in the premises which it was entitled to enforce or protect in its courts, and hence the United States has not been defrauded, under Sec. 37 of the Penal Code.

5. That the United States has no jurisdiction to punish the alleged conspiracy in fraud upon, or violation of, laws of the State of Rhode Island, on the facts appearing in the indictment, since the subject-matter of the indictment is a matter which the state may exclusively regulate under Art. I, Sec. 4 of the Constitution of the United States in the absence of Congressional action.

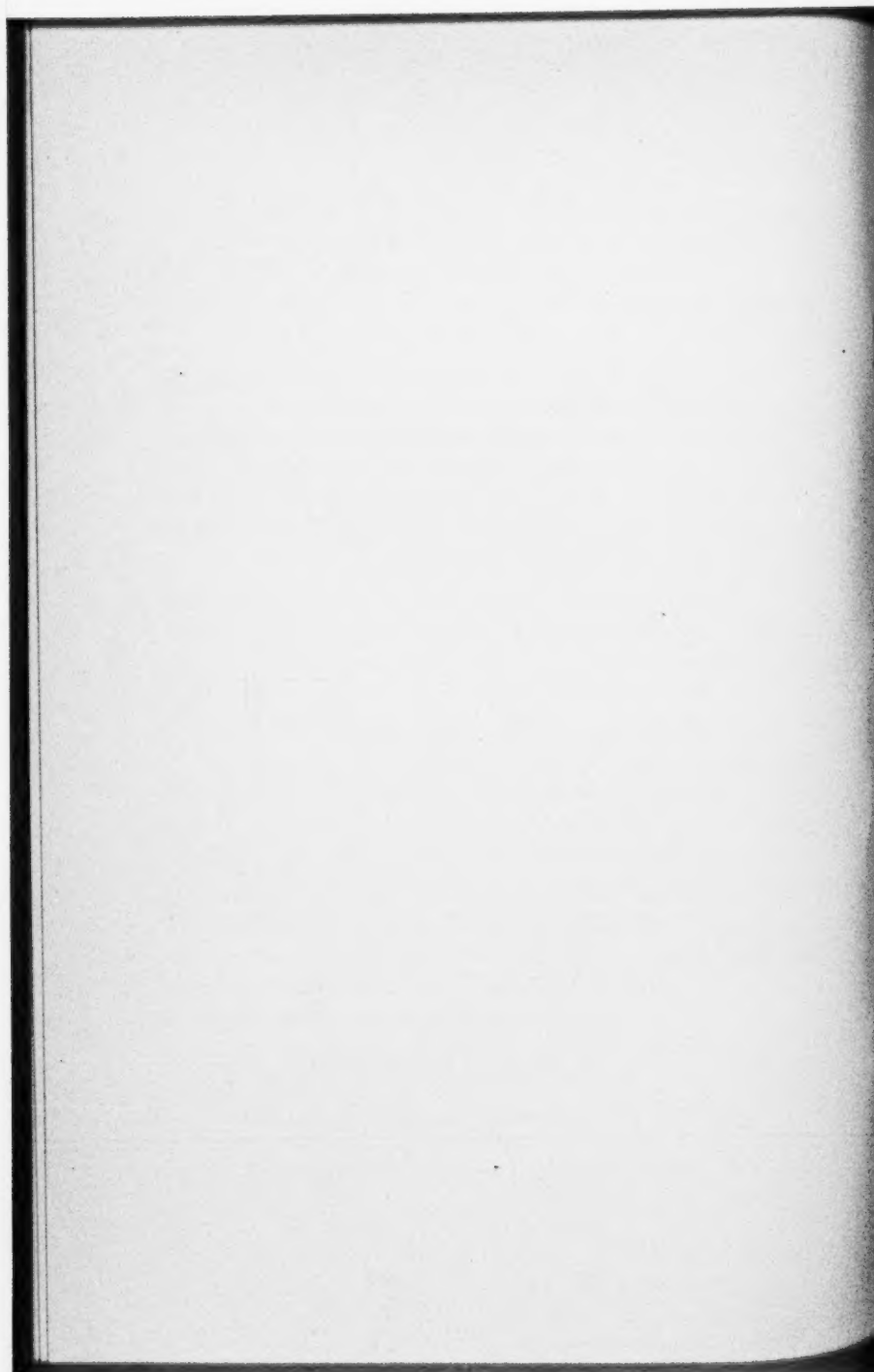
6. That the indictment is not sustained by the authority of any adjudicated cases in the courts of the United States.

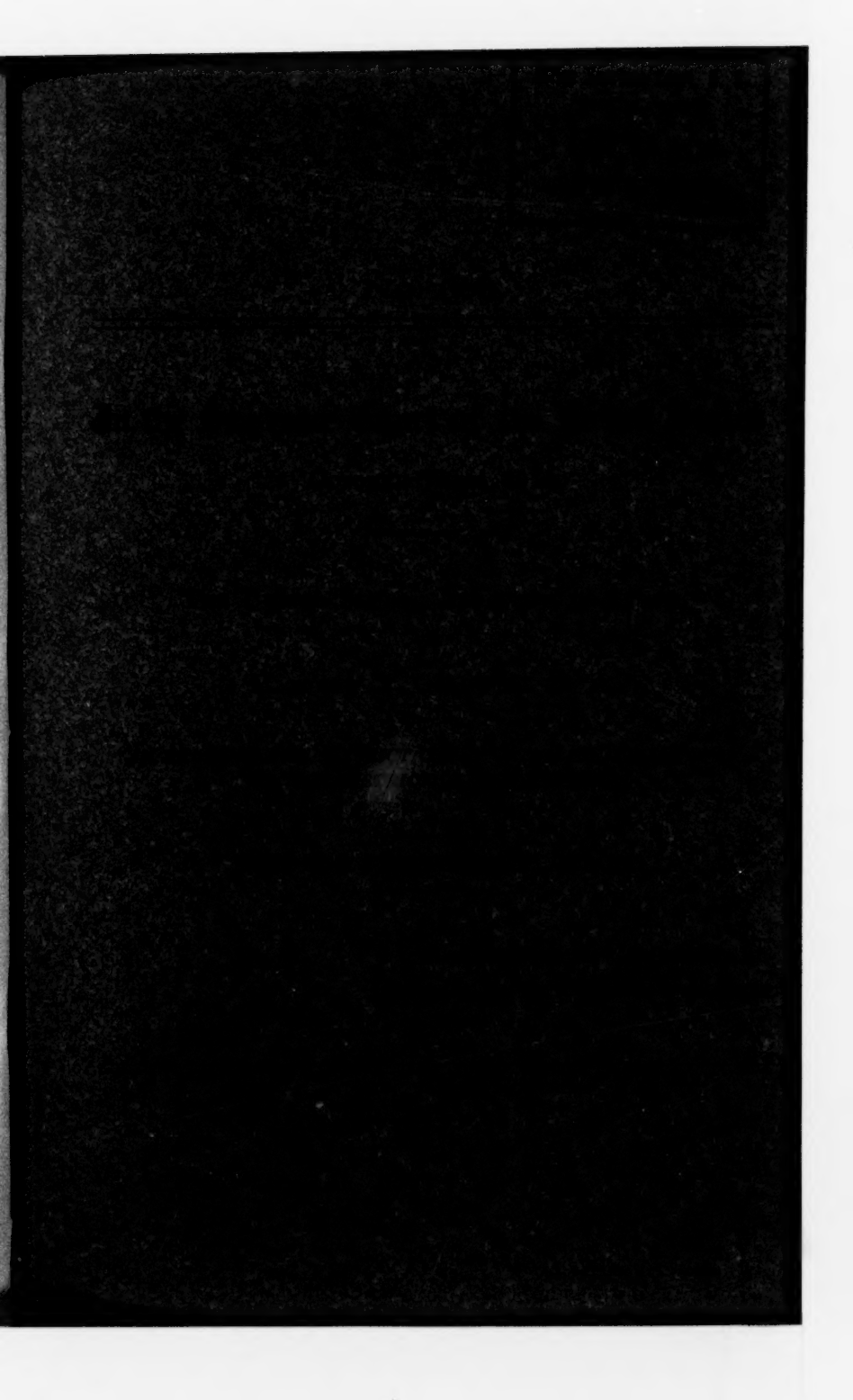
THEREFORE, THE JUDGMENT OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND SUSTAINING THE DEMURRERS IN THIS CASE ON THE GROUND THAT SEC. 37 OF THE CRIMINAL CODE DOES NOT EMBRACE THE CONSPIRACY ALLEGED IN THE INDICTMENT SHOULD BE AFFIRMED.

Respectfully submitted,

ALEXANDER L. CHURCHILL,

Attorney for Defendants in Error.





INDEX

	PAGES
Statement of Case	1
(a) Proceedings in Court Below	1
Demurrer raising construction of Sec. 37	1, 2
Decision of District Court sustaining demurrer, 2, 3	
Writ of error under Criminal Appeal Act	4
(b) Analysis Of Indictment	4
Alleges conspiracy to defraud United States by corrupting and debauching general election at which Congressman was to be elected	4, 5
1st paragraph alleges conspiracy to bribe at general election	4, 5
2nd paragraph alleges conspiracy to distribute intoxicating liquor at election	5
3d paragraph alleges conspiracy to bribe voters and cause them to vote for candidate for Rep- resentative in Congress	5
4th paragraph alleges conspiracy to commit wilful fraud on Art. I, Sec. 2 of Constitution of United States	6
5th paragraph alleges conspiracy to commit wilful fraud on law of Rhode Island, regulating sale of liquor	6
6th paragraph alleges conspiracy to commit wilful fraud on bribing laws of Rhode Island ..	6
7th paragraph alleges conspiracy to prevent and obstruct administration of such laws	7
8th paragraph alleges conspiracy to obtain cer- tificate of election from Governor of Rhode Island	7
This eliminated—Governor has no power to grant certificate	7, 8

	PAGES
9th paragraph alleges conspiracy to "foist" candidate on United States House of Representatives.....	8, 9
9th, 10th, 11th immaterial recital of laws of Rhode Island relative to qualification of voters.....	9
13th paragraph alleges that certain defendants held certain county and town offices.....	9, 10
14th paragraph alleges intent of conspiracy to defraud United States of "fair and clean election" of Representative in Congress.....	10
Second count similar to allegations in first count, add nothing by way of fact.....	10, 11
Indictment as whole alleges conspiracy to defraud United States by bribing voters at general election; by distributing intoxicating liquor at general election; by bribing voters and causing them to vote for Representative in Congress, with intent to deprive United States of fair and clean election.....	10
Assignments of Error	12
But one ruling on which error is predicated, that Sec. 37 does not embrace conspiracy to bribe..	12
All assignments of error not separately argued...	12
Fundamental grounds of controversy considered.....	12, 13
Argument	13
I. Sec. 37 of Penal Code of United States does not protect and was not intended as a statute for the protection of elections for Representatives in Congress of the United States from a Conspiracy to bribe Electors or Corrupt Such Election in the use of Intoxicating Liquors.....	13

	PAGES
Indictment does not allege conspiracy to assail laws of United States or to interfere with Federal Officers in discharge of functions	14
Does not fall within Sec. 19 of Penal Code	15
Question involves relation between Government of United States and states, relating to regulation of elective franchise	15, 16
Defendants' contention that Congress under Sec. 37 did not intend to enter this field	16
Opinion of lower Court	16, 17
(a) Power to Regulate Congressional Elections	18
Art. I, Sec. 4 of Constitution, source of power	18
States have primary power	18
United States has ultimate power	18
Congress must act before United States has jurisdiction	18
(b) Rule of Construction	19
Court will not presume Congress intended to occupy field of concurrent jurisdiction in absence of clear enactment	19
Joplin Mercantile Co. v. United States, 235 U. S. 699	19
(c) Contemporaneous Exposition	20
Madison's argument before Virginia Convention	20, 21
Federalist	21
Story, Commentaries	21
(d) Early Legislation	22
(e) Acts of 1870 and 1871 Regulating Federal Elections	22
Acts in force in 1878 demonstrates Congress did not intend to embrace bribery at elections under second clause of Sec. 37	22
Sec. 5511 Rev. Stat. prohibiting bribery, etc.	23

	PAGES.
Sec. 5512 regulating registration of voters	24
Sec. 5515 relating to State election officers	24
Civil Rights Act, Sec. 5508, Rev. Stat.	25
United States v. Mosley, 238 U. S. 383, con- sidered	26
Circumstances under which Sec. 5508 and second clause of Sec. 5440 were enacted dissimilar	26
Sec. 37 not connected with legislation in respect to bribery at elections or enforcement of civil rights	26, 27
(f) Repeal of Acts of 1870 and 1871 Regulating Con- gressional Elections	27
Secs. 5511, 5512, 5515, 5520, and provisions vest- ing administrative control in United States over federal elections, repealed	27
Report of Committee on Repeal of Federal Election Laws, 53d Congress	28
Reason for repeal to divest Federal Govern- ment of jurisdiction over certain election offenses, including bribery	28, 29
(g) Subsequent Legislation	29
Same policy followed of leaving to States regu- lation of election in legislation under 17th Amendment	29
Act of June 4, 1914, Chap. 123, 38 Stat. 384, cited	29
James v. Bowman, 190 U. S. 127, holding unconstitutional Sec. 5507 and deciding that United States Courts have no power to punish bribery, considered	30
Language of constitution, legislative history and decisions show Congress never intended to punish bribery at elections under Sec. 37	33

	PAGES.
II. The Courts of the United States have no jurisdiction to punish conspiracy to bribe electors at a Congressional Election.....	33
Indictment based on power of Court to punish conspiracies to bribe electors.....	33, 34
United States could not maintain an indictment alleging bribery.....	34
Could not maintain indictment for conspiring to commit offense against United States under first clause of Sec. 37.....	34
Government has denominated such acts conspiracy to defraud the United States.....	34
Immaterial whether conspiracy be denominated conspiracy to defraud United States or to commit offense against the United States in view of question presented.....	35
Essential question: Has Congress relegated power under Sec. 4, Art. I, to legislate respecting bribery to the states.....	35
Opinion of lower Court.....	35
By repeal of Sec. 5511 conspiracy to bribe voters ceased to be a conspiracy to commit an offense under first clause of Sec. 5440, Rev. Stat.....	36
Cannot presume that Congress intended to reserve power under second clause of Sec. 37 to punish identically same subject matter....	36
United States cannot indirectly punish acts which it has no power to punish directly either as bribery or conspiracy to bribe.....	36
III. The United States cannot maintain an Indictment for conspiracy to defraud the United States by the bribery of electors at a Congressional Election in the absence of a statute declaring or defining the right or functions in respect to which the United States was to be defrauded as alleged in the Indictment.....	37

	PAGES
Indictment drawn on theory that United States has right to fair and free election in absence of penal legislation	38
Construction of indictment by lower Court in this respect	38
"Defraud" as used in Sec. 37 is broader than at common law	39
Admitted that it covers conspiracies to assail administration of laws of United States	39
Some provision of positive law declaring and defining rights of the United States must be involved to ground indictment under Sec. 37.	40
Sec. 2, Art. I of Constitution has no application to subject matter of bribery	41
Right of citizen to vote under Sec. 19 protected	41
This right not involved in the case	41
Sec. 4, Art. I governs legislation protecting election from bribery	41
Does not create judicial rights, but is grant of power to create them	42
United States v. Waddell, 112 U. S. 76	42
Government argument that Sec. 19 declares right of United States, unsound	43, 44, 45
Provisions of United States statutes in force respecting elections	45, 46
None of them relate to bribery at elections	46
Entire regulation and protection of elections except as specified in hand of States	46, 47
No penal laws of United States violated by alleged conspiracy	47
No administrative regulations assailed	47
No right declared by any statute violated	47
Rights violated, if any, rights of State of Rhode Island	47, 48

	PAGES
Scope of Sec. 37 under theory of Government . . .	48
Would expand section beyond legislative foresight	48
Meaning of fair and free election not fixed by statute or common law	48
Bribery not only means of unduly influencing election	49
What acts included as violating free and fair election only defined by judicial legislation . . .	49
Also if Sec. 37 protects Congressional elec- tion must extend to protection of creation of executive and judicial branches	49, 50
Congress did not intend to give Sec. 37 such scope	50

IV. United States cannot maintain an indictment for con- spiring to defraud the United States based on the allegations of a conspiracy to violate the penal laws of the State of Rhode Island prohibiting bribery at an election held within the State	51
Indictment sets up conspiracy to defraud United States by violation of laws of Rhode Island prohibiting bribery	51, 52
Law of Rhode Island relating to bribery, Sec. 3, Ch. 20, General Laws of Rhode Island, 1909	52, 53
Position of United States is that laws of Rhode Island create a right which United States can make foundation of indictment	53
Only state creating penal law can enforce rights under them	54
Huntington v. Atrill, 146 U. S. 657	54
Pettibone v. United States, 148 U. S. 197	55
States do not act as agents of the United States in legislating on sub- ject of bribery, so as to create Fed- eral rights	55, 56, 57, 58

	PAGES
No adoption of State statutes by implication . . .	59
Sho-Shone Mining Co. v. Rutter, 177 U. S. 505 . .	57
Swin v. Breedlove, 2 How. 29	60
Legislative construction	61
Secs. 5511, 5512, 5515 Rev. Stat. adopted state statutes as basis for Federal action	61
Specific legislation required	61
"Anomalous condition" presented: In re Coy . .	62
Repeal of statutes	62
Court asked to validate indictment on theory that laws of Rhode Island are part of Federal Code and revive condition existing before repeal of election laws of 1870	62
If theory of indictment is correct large number of state statutes would be swept into Federal Courts for adjudication	63
Question of what statutes protect fair and free elections not defined by Congress	63
Must be ascertained by Courts in absence of legislation	63
Rights violated are rights of State of Rhode Island	64
V. This Indictment is not sustained by the authority of any decisions in the Courts of the United States	64
Indictment framed to bring case within doctrine of Haas v. Henkel, 216 U. S. 462; Curley v. U. S., 130 Fed. 1; U. S. v. Aczel, 219 Fed. 917, 232 Fed. 652	64
Haas v. Henkel, considered	65
Curley v. United States, considered	66
United States v. Aczel, considered	67
Does not embrace conspiracy to bribe voter . .	68
Decision of District Court on count under Sec. 37 not affirmed in C. C. A. on appeal . . .	69

	PAGES
Haas v. Henkel, Curley v. U. S., establish doctrine that conspiracy to impair administration of laws of United States is within Sec. 37.....	70
Lamar v. United States, 241 U. S. 112, not applicable to case at bar.....	70
Essential difference between conspiracy to assail administration of law of United States as in Haas v. Henkel, and conspiracy which goes to creation of House of Representa- tives.....	71
Point that Sec. 37 covers conspiracy to deceive House of Representatives not well founded....	72
Therefore claim that United States was to be defrauded by payment of salary to Congress- man not well taken.....	73
Further, Haas v. Henkel, Curley v. U. S., founded on right of United States estab- lished by statute	74
No such statute in case at bar.....	74
Conclusion.....	75

TABLE OF CASES

	PAGES.
Aczel v. United States, 232 Fed. 652	69
Burton v. United States, 202 U. S. 344	71
Cooley v. Board of Port Wardens, 12 How. 299	56
Coy, In Re, 127 U. S. 731	62
Curley v. United States, 130 Fed. 1, 64, 66, 70, 71, 72, 73, 74, 75	75
III Farrand, Records Federal Convention, 311	21
Federalist, Essay 58	21
Haas v. Henkel, 216 U. S. 462, 64, 65, 70, 71, 72, 73, 74, 75	75
Huntington v. Attrill, 146 U. S. 657	54
James v. Bowman, 190 U. S. 127	30, 41
Joplin Mercantile Co. v. United States, 235 U. S. 699 . . .	19
Lamar v. United States, 241 U. S. 102	70
Pettibone v. United States, 148 U. S. 197	54
Report on Repeal of Election Laws	28
Sho-Shone Mining Co. v. Rutter, 177 U. S. 505	59
Siebold, Ex Parte, 100 U. S. 717	18, 22, 41, 57
Story, Commentaries, Vol. 1, Sec. 816	21
Swafford v. Templeton, 185 U. S. 787	15
Trade Mark Cases, 100 U. S. 82	20
Swin v. Breedlove, 2 How. 29	60
United States v. Aczel, 219 Fed. 917	64, 67, 74
United States v. Harris, 106 U. S. 629	50
United States v. Jones, 109 U. S. 531	56
United States v. Keitel, 211 U. S. 370	39
United States v. Morrissey, 32 Fed. 147	62
United States v. Mosley, 238 U. S. 383	15, 26, 41
United States v. Reese, 92 U. S. 214	63
United States v. Waddell, 112 U. S. 76	42
Wayman v. Southard, 10 Wheat. 1	58
Wiley v. Sinkler, 179 U. S. 58	15
Yarbrough, Ex Parte, 110 U. S. 651	15, 43, 46

LAWS AND CONSTITUTIONAL PROVISIONS.

	PAGES.
Constitution of United States.	
Article I, Sec. 2	6, 40, 67, 68, 69
Article I, Sec. 4	16, 18, 28, 32, 33, 40, 42, 46, 47, 48, 56, 57, 64, 76, 77
Article II, Sec. 1	50
Art. IV, Sec. 3	42
United States, Rev. Stat., Sec. 22	46
United States, Rev. Stat., Sec. 23	46
United States, Rev. Stat., Sec. 24	46
United States, Rev. Stat., Sec. 25	45
United States, Rev. Stat., Sec. 26	46
United States, Rev. Stat., Sec. 27	45
United States, Rev. Stat., Sec. 5440	22, 24, 27, 35, 36
United States, Rev. Stat., Sec. 5507	30
United States, Rev. Stat., Sec. 5508	25, 27, 28, 42, 45
United States, Rev. Stat., Sec. 5511	23, 27, 35, 36, 61
United States, Rev. Stat., Sec. 5512	24, 27, 61
United States, Rev. Stat., Sec. 5515	24, 27, 61, 62
United States, Rev. Stat., Sec. 5520	25, 27, 45
United States Penal Code, Sec. 19	15, 43, 44, 67
United States Penal Code, Sec. 37	1, 2, 4, 12, 13, 16, 26, 31, 33, 34, 38, 40, 48, 49, 50, 51, 53, 55, 59, 63, 64, 73, 75, 76, 77
Act of Feb. 8, 1894	27
Act of Jan. 16, 1901, 21 Stat. L. 733	45
Act of March 2, 1907, 34 Stat. L. 1246	3
Act of June 25, 1910, Ch. 392	45
Act of June 19, 1910, Ch. 33	45
Act of June 4, 1914, Ch. 123, 38 Stat. L. 484	29
General Laws of Rhode Island, 1909,	
Chapter 19, Secs. 1, 4	7, 8
Chapter 20, Sec. 3 (Bribery Act)	6, 52
Chapter 123, Sec. 2 (Liquor Law)	6



Supreme Court of the United States

OCTOBER TERM, 1916.

NO. 683.

THE UNITED STATES, PLAINTIFF IN ERROR,
vs.
MATHEW T. GRADWELL, EMANUEL CARPENTER,
JESSE CARR, ET AL.

BRIEF ON BEHALF OF THE DEFENDANTS IN ERROR.

STATEMENT OF CASE.

(a) PROCEEDINGS IN THE COURT BELOW.

The defendants in error were indicted in the District Court of the United States for the District of Rhode Island at the May term thereof, 1915 (record page 2).

The indictment, brought under Section 37 of the Penal Code of the United States (Section 5440 Rev. Stat.), alleged generally that the defendants conspired to defraud the United States by corrupting and debauching a general election held in the Town of Coventry and State of Rhode Island on November 3, 1914, at which election a Representative in Congress was to be and was chosen and elected.

After certain proceedings not material here, each of the defendants filed a demurrer to the indictment, (record pages 26-42).

The demurrers of all of the defendants were identical.
(record page 25)

The demurrers sufficiently and appropriately raised the question whether or not Section 37 of the Penal Code of the United States could be construed to support an indictment for corrupting and debauching a general election at which a member of the Congress of the United States was to be elected, and therefore it is not necessary to set forth the grounds of demurrer more at large.

The defendants also attacked the indictment for uncertainty, insufficiency, ambiguity and duplicity both in the charging parts of the indictment and in the allegation of overt acts.

The District Court sustained the demurrers, (record pages 42-50) and entered an order to that effect. (record page 50)

The Court sustained the demurrers on two grounds.

The first ground of the decision was that Section 37 of the Penal Code of the United States did not embrace the conspiracy set forth in the indictment.

The Court said:

"Brown, J.

"This is an indictment under Section 37 of the Criminal Code, charging a conspiracy to defraud the United States by corrupting a general election at which a Representative in Congress was voted for and elected.

"The fundamental question is whether this conspiracy statute is to be so broadly construed as to comprehend a conspiracy of this character.

"Because the subject matter of the regularity of State elections for Representatives is so substantially different from that of any of the other cases of fraud which have been held to be within the conspiracy statute, because the rights of the United States in such an election are to be determined by the House of Representatives itself, and are to be protected by the States which have the primary interest and a more direct interest than the Government itself in the choice of Representatives, because the questions are to such an extent political questions, and for other reasons above stated, I am of the opinion that Section 37 cannot be so construed as to include the matters set forth in this indictment.

"I am, therefore, of the opinion that the demurrers must be sustained on the fundamental ground." (record pages 42-48)

The court also sustained the demurrers on the ground

"that the indictment is so vague, uncertain, insufficient and duplicitous in its allegations that the defendants are not sufficiently apprised of the nature of the charge against them to enable them to prepare their defense thereto. Even if it be a crime under Section 37 to conspire to corrupt an election for a Representative in Congress, I am of the opinion that the defendants would be deprived of their right to be informed of the nature of the offense by putting them to trial upon this indictment." (record page 50)

The United States thereupon sued out a writ of error to this court under Act of Congress, March 2, 1907, 34 Stat. at L., 1246, (record pages 51-52) and filed thirty (30) assignments of error to the order sustaining the demurrers. (record pages 52-56)

(b) ANALYSIS OF INDICTMENT.

The indictment is in two counts, and each count purports to charge the defendants with conspiring to defraud the United States under the second clause of Section 37 of the Penal Code of the United States.

The controlling language of each count in this respect is that the defendants "did * * conspire to defraud the United States." (record pages 2 and 17)

Following the allegation that the defendants conspired to defraud the United States, each count then alleges generally that the means whereby this conspiracy to defraud was to be effected was

"by corrupting and debauching the General Election held in the Town of Coventry on November 3, 1914, at which said election, a candidate for Representative in Congress was voted for, chosen and elected." (record pages 2 and 17)

The charging part of the first count contains a mass of matter distributed into fourteen paragraphs.

The first paragraph of the first count (record pages 2-3) alleges, omitting unessential matters, that the

"defendants did devise a scheme to bribe, * * * the voters of the Town of Coventry on * * the third day of November, 1914, at which time and place a general election was held for the election of State Officers, and for Representative in Congress which * * scheme was as follows: The * * defendants * * * were to give the voters * * * who voted as the defendants directed * * * and for voting in a manner satisfactory to the * * defendants * * , brass checks * * * and the * * defendants were to * * * redeem said brass

checks * * * at some time after said election day, by * * * paying to said voters who were given checks * * * * * , a sum of money, to wit, \$5.00, etc."

The second paragraph (record pages 3-4), sets forth that

"as a part of said conspiracy said defendants did * * * conspire * * * to defraud the United States * * * in the manner following: The * * * defendants * * * were to distribute to voters * * * on * * * election day, * * * brass checks * * called 'beer checks' which * * checks were to be given for a bottle of beer to be furnished by said defendants with the intention on behalf of said defendants to corrupt, bribe and influence said electors and voters in the Town of Coventry, and with the purpose and intention of depriving the United States of the right to a fair and clean election."

The third paragraph (record page 4) alleges that the defendants

"did * * * conspire to * * * influence and bribe and after having * * * influenced and bribed to vote and cause to be voted for a candidate for Representative in Congress at said election, * * * a large number of persons who had * * * the qualifications requisite for electors * * * for Representative in Congress * * * and with intention to defraud the United States, did * * * influence and bribe, and after having influenced and bribed, did vote and cause to be voted for a candidate for Representative in Congress at said election * * * a large number of male citizens of the United States * * * who were qualified to vote for said Representative in Congress, to wit: (naming nine persons) and divers other persons to the grand jurors unknown."

The fourth, fifth and sixth paragraphs of the first count are all drawn in substantially the same manner and each

charges that as a part of the same conspiracy the defendants conspired to commit a "wilful fraud" on some law of the United States or of the State of Rhode Island.

The fourth paragraph (record pages 4-5) purports to set out a conspiracy "to defraud the United States of America by committing a wilful fraud upon the law of the United States, to wit, upon Art. I, Sec. 2, of the Constitution of the United States, which reads as follows:

'The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.' "

Paragraph five (record page 5) alleges that the defendants conspired to commit a "wilful fraud" upon Sec. 2 of Chap. 123, General Laws of Rhode Island, 1909, and the statute is set out in full.

It provides generally for the granting of licenses for the manufacture and sale of intoxicating liquors in the several cities and towns of the State, and the terms and conditions on which the same may be granted by town councils or boards of license commissioners.

The sixth paragraph (record page 6) alleges that the defendants conspired to commit a wilful fraud upon the laws of the State of Rhode Island made and provided "for the control and protection of elections held within the State of Rhode Island, to wit: Section 3, Chap. 20 of the General Laws of Rhode Island, 1909", and sets forth such law, which defines and punishes the crime of bribery at elections held within the state.

The seventh paragraph (record page 7) alleges a conspiracy to defraud the United States "by perverting and obstructing the due administration of said laws" and, further alleges that the defendants assisted in the mal-administration of said laws, and corruptly administered, enforced and procured the fraudulent and corrupt administering of said laws on the day of the general election.

This paragraph does not set forth how the administration of the three preceding laws, was, or was to be, perverted or obstructed, or how or in what way such laws were, or were to be mal-administered, or fraudulently and corruptly administered.

The eighth paragraph (record pages 7-8) sets forth that the defendants conspired to defraud the United States by obtaining from the Governor of the State of Rhode Island, a certificate of election, certifying that a person whom they intended to elect illegally and corruptly, and contrary to the Constitution and laws of the United States, and of the State of Rhode Island was "regularly and legally elected as Representative in Congress" and by having such person present the certificate of election to the clerk of the House of Representatives in order that such person might have his name placed on the roll of Representative elect.

This charge of the indictment may be eliminated from further consideration.

The Governor of the State of Rhode Island has no right, power or authority to grant a certificate of election to a Congressional candidate.

The General Laws of Rhode Island, 1909, Chapter 19, Section 1 provides:

"There shall be a state returning-board consisting of five members. At the January session of the general assembly in each year, the governor, with the advice and consent of the senate, shall appoint one member of said board to hold office until the first day of February in the fifth year after his appointment to succeed the member of said board whose term will next expire. Any vacancy which may occur in said board when the senate is not in session shall be filled by the governor until the next session thereof, when he shall, with the advice and consent of the senate, appoint some person to fill such vacancy for the remainder of the term. The members of said board shall not all be of the same political party. Said board shall elect one of its members as chairman to preside at its meetings, and in his absence shall elect some member as chairman pro tem."

Section 4 provides:

"Said board shall forthwith, after such result has been ascertained, furnish to each candidate elected a certificate of his election and shall deliver to the secretary of state, who shall keep the same on file in his office, a statement of the number of ballots cast in each voting-district, ward, town, and city for each candidate. * * * * * Such certificates and statement shall be signed by said board and shall be final and conclusive evidence of the matters in them contained and of the title of the persons declared elected to the offices for which they have severally received certificates of election."

The ninth paragraph (record page 8) sets forth that the defendants conspired to defraud the United States "by foisting" upon the United States as a duly elected member a certain person whom the defendants intended to

"elect illegally and contrary to the Constitution and Laws of the State of Rhode Island, and contrary to the Constitution and Laws of the United States, and to secure for such person not duly elected the privileges and emoluments of a member of the House of Representatives."

Then follow three paragraphs, ten, eleven, and twelve (record pages 8, 9 and 10) composed of quotations from those portions of the Constitution and statutes of Rhode Island which establish the qualifications of voters at state and municipal elections, and a reference to the laws of the State of Rhode Island as to bribery at elections already quoted in paragraph six.

There is nowhere in the entire indictment any allegation of any fraud, or illegal act done or agreed to be done affecting the qualification of voters as established by the laws referred to, or of any act done or contemplated by the defendants or any other person by which any qualified voter was prevented, or was to be prevented or hindered or obstructed in his right to vote at the general election, or that any person was or was to be allowed to vote who was not qualified so to do.

As mere recitals of laws not involved in the indictment, it is not necessary to give the allegations of these three paragraphs further consideration.

Paragraph thirteen (record page 10) alleges that

"during * * * said time * * * Lewell Whitman was Deputy Sheriff of the Town of Coventry, * * * and * * * Mathew T. Gradwell was liquor officer, charged with the enforcement of the liquor law in said Town of Coventry."

No charge of crime is contained in this paragraph.

The fourteenth and concluding paragraph of the first count (record page 10) sets forth of what the United States was to be defrauded by the conspiracy.

The allegation is:

"It was the intention of the said defendants * * to defraud the United States * * by depriving it of its lawful right to a fair and clean election * * on * * November 3, 1914, at which time a Representative in Congress of the United States of America was * * voted for, chosen and elected. * * "

And this paragraph further alleges that it was the further intention of the said defendants

"to obstruct, impair, corrupt and debauch the election 'on the third day of November, A. D., 1914,' and so deprive the United States of America of its lawful right to have a Representative in Congress * * elected fairly and in accordance with law."

Summed up, the entire allegation may be stated thus: That the defendants conspired to defraud the United States of its right to a "fair and clean" election, and to have a Congressman elected in accordance with law.

The first paragraph of the second count of the indictment (record pages 16-18) is in substance the same as the first paragraph of the first count.

The second paragraph of the second count (record page 18) is substantially similar to the sixth paragraph of the first count and adds nothing as a statement of fact to the indictment.

This third paragraph of the second count (record pages 18 and 19) is similar to the seventh paragraph of the first count except that its allegations are confined to the maladministration of a single law, to wit, the law of Rhode Island, prohibiting bribery.

The concluding paragraph of the second count (record pages 19 and 24) is identical with the concluding paragraph of the first count.

The entire second count of the indictment, therefore, adds nothing of substance to the indictment, since the paragraphs thereof are similar in substance to paragraphs one, six, seven and fourteen of the first count.

Paragraphs one, two and three of the first count, allege, as has been seen, in brief, a conspiracy to bribe voters and to dispense beer to electors, as the means whereby the alleged conspiracy was to be carried out.

Paragraph four to nine inclusive of the first count appear to be mere conclusions and add nothing *by way of fact* to the charges of the indictment.

It therefore appears that paragraphs one, two and three of the first count set forth the gist of the alleged conspiracy or conspiracies. They contain the substantial averments of the indictment and constitute the gravamen of the alleged offense or offenses.

Thus analyzed the indictment as a whole alleges the facts to be that the defendants conspired to defraud the United States by corrupting and debauching a general election at which a Representative in Congress was to be elected; that such debauchery and corruption was to consist of:

- (1) Bribing voters at such general election by the use of brass checks.
- (2) Dispensing beer to voters at such general election.
- (3) Bribing certain persons and causing them to vote for a candidate for Representative in Congress.

and that the defendants intended by these means to deprive the United States of its right to a "fair and clean election", and intended to deprive the United States of its right to have a Congressman elected "in accordance with law".

THE ASSIGNMENTS OF ERROR

The United States filed thirty (30) assignments of error. (record pages 52-57)

They are drawn with a view evidently to challenge all the reasons which the learned court deemed to be pertinent and controlling in respect to its decision which in reality embraced but one ruling—that Sec. 37 of the Penal Code did not embrace the conspiracy charged in the indictment.

For this reason, the assignments of error will not be separately considered in this brief, but only the fundamental grounds of the controversy, and they will be considered under general heads of argument as follows:

ONE. Section 37 of the Penal Code of the United States does not and was not intended to protect the election of Representatives in Congress of the United States from a conspiracy to bribe electors at such election or to corrupt such elections by the use of intoxicating liquor.

TWO. The Courts of the United States have no jurisdiction to punish a conspiracy to bribe electors at a Congressional election.

THREE. The United States cannot maintain an indictment for conspiring to defraud the United States by the bribery of electors at a Congressional election in the absence of a statute, securing, declaring or defining the rights or functions in respect to which the United States was to be defrauded as alleged in the indictment.

FOUR. The United States cannot maintain an indictment under Sec. 37 of the Penal Code for conspiring to defraud the United States based on allegations of a conspiracy to violate the penal laws of the State of Rhode Island prohibiting bribery at elections held within that State.

FIVE. This indictment is not sustained by the authority of any decisions of the Courts of the United States.

ARGUMENT.

POINTS.

I.

SEC. 37 OF THE PENAL CODE OF THE UNITED STATES DOES NOT AND WAS NOT INTENDED TO PROTECT ELECTIONS OF REPRESENTATIVES IN THE CONGRESS OF THE UNITED STATES FROM A CONSPIRACY TO BRIBE ELECTORS OR CORRUPT SUCH ELECTIONS BY THE USE OF INTOXICATING LIQUOR.

AUTHORITIES.

- Federalist*, Dawson's Ed. 410.
Joplin Mercantile Co. vs. U. S., 235 U. S. 699.
James vs. Bowman, 190 U. S. 127.
Madison Argument before Virginia Convention,
 3 Farrand 311-312.
Ex Parte Siebold, 100 U. S. 717.
Trade Mark Cases, 100 U. S. 82.
U. S. vs. Mosley, 283 U. S. 383.
1 Story, Commentaries on Constitution, 4th Ed., 576.

The gist of the indictment is that the defendants conspired to defraud the United States by procuring the election of a Representative in Congress by the bribery of electors, and the corruption of the general election by the use of intoxicating liquor, and that they conspired to do these things with the intent to defraud the United States of the right to a "fair and clean" election of a Congressman.

The indictment does not allege any conspiracy to commit an offense against the United States, nor any conspiracy to defraud the United States of any property, nor to obstruct, or interfere with, or defraud any Federal officer in the discharge of his official functions or duties, nor are any facts pleaded showing that the purpose of the conspiracy was to impair or assail any administrative function of the United States, or interfere with the operations of any statute of the United States.

Further, the alleged conspiracy did not embrace any conspiracy to interfere with the conduct of the election in the registration of voters, or the casting, reception, counting, return or canvassing of the votes of qualified electors at the election in question.

There is no allegation that any citizen of the United States was, or was to be obstructed or intimidated or, prevented from exercising his constitutional rights as a citizen of the United States or was to be intimidated or prevented from exercising his right of suffrage within the meaning of Section 19 of the Criminal Code of the United States.

In other words, there is nothing in any aspect of the case which brings the indictment within the doctrines announced in

Ex parte Yarbrough, 110 U. S., 651; 4 Sup. Ct. Rep. 152.

Wiley vs. Sinkler, 179 U. S. 58; 28 Sup. Ct. Rep. 17.

Swafford vs. Templeton, 185 U. S. 787, 22 Sup. Ct. Rep. 783.

Mosley vs. United States, 238 U. S. 383; 35 Sup. Ct. Rep. 904.

The question, therefore, is squarely presented whether the second clause of Section 37 of the Criminal Code of the United States, reading as follows,

“If two or more persons * * conspire to defraud the United States in any manner or for any purpose, and one or more of the parties do any act to effect the object of the conspiracy, each of the parties shall be fined, etc.”,

can be construed to embrace a conspiracy to bribe electors to vote for a particular candidate for Representative in Congress at a Congressional election and to corrupt the general election by the distribution of intoxicating liquor among electors.

The construction of this statute in respect to the indictment not only embraces the relations between the

United States and the defendants in error, but also involves the relations between the United States and the several States of the Union respecting the regulation of Congressional elections.

Was the second clause of Section 37, intended, and can it reasonably be construed, to embrace within its scope the important matters of bribery and corruption at Congressional elections, thus vesting the Federal Courts with jurisdiction over such cases; or should it be construed to leave the control and regulation thereof where they have, with a brief exception, hitherto remained, namely, in the hands of the several States?

This mere statement of the case demonstrates the character of the questions involved.

Whether the individual states or the Federal Government should protect the purity of the ballot at Congressional elections presents a broad question of public policy to be decided by Congress in the exercise of the reserved power granted it under Art. I, Sec. 4 of the Constitution of the United States.

It is the contention of the defendants that in the absence of specific legislation of any character to this end, it cannot be presumed that Congress intended to occupy the field embracing such alleged offenses against the elective franchise by the general language of the second clause of Sec. 37 of the Penal Code.

The learned Court below in discussing this question well said:

"The question of protecting the United States against the class of frauds which involve merely the

relations of the offender and the United States, and the question of legislating respecting the conduct of the elections whereby the people of the respective States choose their Representatives in Congress are substantially distinct; so distinct in substance that it is highly improbable that it was intended to legislate on both together. The *Curley case*, 122 Fed. 738, 130 Fed. 1; *Haas vs. Henkel*, 216 U. S., 462, 479; and the cases other than the *Aczel case*, involved no consideration of the relations between State and National Governments, or of the political policy of exercising the constitutional power of Congress to legislate concerning the elections which are primarily the act of the people of the States in choosing their Representatives." (record page 44)

and

"It is impossible to believe that in extending the conspiracy statute to embrace frauds other than those upon the revenue it ever occurred to any Members of Congress that they were legislating upon the subject of congressional or presidential elections, or that questions of public policy as to the relations between State and Nation were involved. This subject is so important, and of such special character, that it would have been dealt with specifically and not in an omnibus clause, had it been intended to deal with it at all." (record page 48)

A consideration of the language of the Constitution by virtue of which both the several States and the Congress of the United States are empowered to regulate Congressional elections; the subject matter embraced; the contemporaneous construction of the Constitution in this respect and the course of legislation on this subject demonstrate that the position of the Court below was correct.

(a) POWER TO REGULATE CONGRESSIONAL ELECTIONS.

Section 4 of Article I of the Constitution of the United States provides,

"The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators."

While there can be no question of the ultimate power of Congress to act, yet the clear intent of this section is to leave to each state the primary power to regulate the election of its own Representatives in Congress. This is the normal and usual method contemplated by the Constitution. Before the United States has jurisdiction over the matters growing out of Congressional elections, *Congress must act* and moreover it being a field of legislation over which the states have express powers, it should appear by clear enactment that Congress intended to occupy such field, and either alter State legislation on the subject or make new regulations of its own.

"The power of Congress, as we have seen, is paramount, and may be exerted at any time and to any extent which it deems expedient; *and so far as it has exercised and no further*, the regulations effected supersede those of the States which are inconsistent therewith."

Ex parte Siebold, 100 U. S. 717.

That it cannot be presumed that Congress intended to occupy a field of legislation of such political importance,

within which the States have the power to legislate, without clear enactment to that effect, is obvious from the nature of the questions which arise in such a situation. The line of demarkation between two sovereignties each exercising jurisdiction over the same general subject matter must be so drawn as to avoid conflict and confusion, and, in the absence of specific legislation no such line can be drawn except by judicial legislation exerted in each case as it arises.

(b) RULE OF CONSTRUCTION.

The application of the rule followed by this court, that an act of Congress will not be construed to confer jurisdiction on the United States in a field wherein the states are exercising a lawful jurisdiction, in the absence of a specific declaration to that effect, is peculiarly called for in this case.

Joplin Mercantile Co. vs. United States, 235 U. S. 699; 35 Sup. Ct. Rep. 291.

In that case, this Court held that a statute of Congress *not repealed* would not be enforced because Congress had given the State of Oklahoma jurisdiction over the same subject matter, that of controlling traffic in intoxicating liquors with the Indian tribes in Oklahoma.

The Court said:

"Without deciding that such control must necessarily be exclusive of co-existing Federal jurisdiction over the same subject-matter, it seems to us that concurrent jurisdiction would be productive of such serious inconvenience and confusion, that, in the absence of an express declaration of a purpose to preserve it, we are constrained to hold that the active exercise of the Federal authority was intended to be at least suspended pending the exertion by the state of its authority in the manner prescribed by the enabling act."

In the *Trade-mark Cases*, 100 U. S., 82, Mr. Justice Miller in delivering the opinion of the Court said:

"If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do, namely: make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the Act of Congress, and in others under state law."

(c) CONTEMPORANEOUS EXPOSITION.

The question as to whether or not the Federal Government or the States should regulate the method of conducting the election of Congressmen does not appear to have been discussed at great length in the Federal Constitutional Convention.

It appears, however, that upon consideration of the subject the objections to any exclusive method of control were recognized as insuperable and it was hence decided to allow each state in its independent, sovereign capacity, to regulate the election of its Congressmen in the first instance, subject to the ultimate power of Congress to legislate if it saw fit, whenever an emergency was presented calling for such action.

"It was founded impossible to fix the time, place and manner of the election of Representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution. And considering the

state governments, and general government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former and the general regulations to the latter. Were they exclusively under the control of the state governments, the general governments might easily be dissolved. But, if they be regulated properly by the state legislatures, the Congressional control will very probably never be exercised."

Madison, Argument before Virginia Convention, 3 Farrand, Record of the Federal Convention, pages 311-312.

See also,

Dawson's Federalist, Essay No. 58, page 410.

Judge Story's exposition while not contemporaneous may properly be referred to as authoritative. He said:

"It was obviously impracticable to frame and insert in the Constitution an election law which would be applicable to all possible changes in the situation of the country, and convenient for all the states. A discretionary power over elections must be vested somewhere. There seemed but three ways in which it could be reasonably organized. It might be lodged either wholly in the national legislature, or wholly in the state legislatures, or primarily in the latter and ultimately in the former. The last was the mode adopted by the convention. The regulation of elections is submitted, in the first instance, to the local governments, which, in ordinary cases (*), and when no improper views prevail, may both conveniently and satisfactorily be by them exercised. But in extraordinary circumstances, the power is reserved to the national government, so that it may not be abused, and thus hazard the safety and permanence of the Union."

1 Story, Commentaries on the Constitution, 4th Ed., page 576, Section 816.

(d) EARLY LEGISLATION.

This manifest intent of Section 4 was followed by Congress which did not exercise its reserved power until 1842.

Some time previous to this date, a practice had grown up in some States of electing all the candidates for Congress on a general State ticket. In order to obviate the evils which it was thought might result from such a method of election, Congress provided in 1842 for a uniform method of election of Congressmen by districts.

Later legislation by Congress required that elections for Congress should all be held on the same day.

(See as to history of Congressional regulation of elections prior to 1870 and 1871, *Ex parte Siebold, supra.*)

(e) LEGISLATION OF 1870-1871.

In 1870 and 1871, in view of the unusual conditions following the Civil War and the admission of the negro race to suffrage, Congress enacted radical and far-reaching legislation, vesting in the United States supervision and control over the election of Congressmen.

These provisions are found in the Act of May 31, 1870, and Act of February 28, 1871 entitled, "The Elective Franchise."

An examination of certain sections of these Acts, which were in force in 1878, when Congress enacted Sec. 5440, Rev. Stat. in its present form, demonstrates that Congress could not have intended to punish conspiracies to bribe electors, independently of all other Federal statutes on the subject, *under the second clause of Section 5440. (Sec. 37 Penal Code of the United States.)*

Disregarding certain statutes which were declared unconstitutional either previous to or subsequent to 1878, it appears that Congressional elections were thoroughly and amply safeguarded against bribery, violence, repeating and kindred offenses, and also against conspiracies to commit such acts, or to obstruct citizens of the United States in the exercise of the right to vote at Federal elections.

Section 5511 Rev. Stat., Act, May 31, 1870, Ch. 114, 16 Stat. L. 141, was sweeping in the protection it afforded Congressional elections.

It provided that,

“If, at any election for Representative or Delegate in Congress, any person knowingly personates and votes, or attempts to vote, in the name of any other person, whether living, dead or fictitious; or votes more than once at the same election for any candidate for the same office; or votes at a place where he may not be lawfully entitled to vote; or votes without having a lawful right to vote; or does any unlawful act to secure an opportunity to vote for himself; or any other person; or by force, threat, intimidation, bribery, reward, or offer thereof, unlawfully prevents any qualified voter of any State or of any Territory, from freely exercising the right of suffrage, or by any such means induces any voter to refuse to exercise such right, or compels, or induces, by any such means, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interferes in any manner with any officer of such election in the discharge of his duties; or by any such means, or other unlawful means, induces any officer of an election or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or

refuse to comply with his duty or any law regulating the same; or knowingly receives the vote of any person not entitled to vote, or refuses to receive the vote of any person entitled to vote or aids, counsels, procures, or advises any such voter, person, or officer to do any act hereby made a crime, or omit to do any duty the omission of which is hereby made a crime, or attempt to do so, he shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three years, or by both, and shall pay the costs of the prosecution."

The registration of voters for Congressional elections was protected by provisions similar in character.

Section 5512, Rev. Stat., Act of February 28, 1871, Ch. 99, 16 Stat. L. 433; Act of May 31, 1870, Ch. 114, 16 Stat. L. 145.

State election officers were brought under the jurisdiction of the United States by Section 5515, Act of May 31, 1870, Ch. 114, 16 Stat. L. 145; Amended, Act, February 18, 1875, Ch. 80; 18 Stat. L. 320,

By the operation of the first clause of Section 5440, Rev. Stat., which made it a crime to conspire to commit an offense against the laws of the United States, which was then in force in its present form, conspiracies to do the things made unlawful by the statutes above quoted were offenses against the United States.

The United States was thus amply protected against acts and conspiracies leveled at the freedom, fairness and orderly conduct of elections.

Moreover, not only were the elections themselves protected from the time of registration until the time of the

return of the certificate to the person elected, but by the provision of Section 5520, Rev. Stat., Act, April 20, 1871, Ch. 22, 17 Stat. L., it was made a crime,

“to conspire to prevent by force or intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy, in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of the Congress of the United States.”

In addition to the wide and stringent provisions of the sections quoted above, Section 5508, Rev. Stat., Act, May 31, 1870, Ch. 116, 16 Stat. L. 141, made unlawful a conspiracy to injure or intimidate citizens in the exercise of their civil rights.

This Section was then in force in the same form as it now appears as Section 19 of the Penal Code. It provided:

“If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.”

This statute extends protection to the right to vote for members of Congress and the right to have the vote counted and “does not confine itself to conspiracies contemplating violence.”

U. S. vs. Mosley, 238 U. S. 383.

It is contended by the government that *U. S. v. Mosley* construing this section is conclusive against the decision of the lower court to the effect that if Congress had intended to protect the right of the United States in elections, it would have said so. (Brief of the U. S., page 17)

The circumstances under which Section 5508, and the second clause of Section 5540 were enacted were so dissimilar that no valid argument can be drawn from the Mosley case in support of the wide construction sought to be given to Section 37.

Section 5508 was originally enacted as part and parcel of a drastic and far-reaching measures aimed as a whole at protecting and enforcing the rights of citizens of the United States in all possible respects, including the right to vote.

As was said in *U. S. v. Mosley*, "Congress put forth all its powers," to deal with the evils which the act was designed to suppress.

Section 37 has no such legislative history, and was not connected in any way with the legislation which, as has been pointed out above, was already on the statute books.

From the foregoing recital of acts in force in 1878, it is clear that the elective franchise was amply, comprehensively and stringently protected from violence, bribery, repeating, false personation, interference with the election officers, derelictions of duty on the part of election officers, false and fraudulent counting of votes, and the mutilation, destruction or conversion of election papers and certificates; the registration of voters was likewise protected; the statutes extending this protection included in their scope all who

aided, counseled, procured or advised any of the unlawful things to be done; in addition to this by force of Section 5440, all conspiracies to do these things were offenses against the United States; finally, Section 5508 Rev. Stat., protected citizens of the United States against all conspiracies to injure them in the exercise of their civil rights, including the right to vote and the right to have the vote counted.

In view of the scope of this legislation in force in 1878, it is an exceedingly cogent argument that Congress did not intend to occupy any part of the field so minutely covered when it passed the second clause of Sec. 5440 in its present form.

(f) REPEAL OF ACTS OF 1870-1871 REGULATING CONGRESSIONAL ELECTIONS.

Secs. 5511, 5512, 5515, 5520, and all the provisions of the Acts of May 31, 1870 and February 28, 1871, vesting administrative control over Federal elections in the United States Government, were repealed by Act of February 8, 1894, Chaps. 25-28 Stat. at L. 36.

Sec. 5508 was left in force unchanged.

Congress by this measure divested the United States of jurisdiction over certain offenses against the elective franchise, including bribery; of power to enforce state laws regulating elections; and abandoned any administrative control over Congressional elections by the Federal Government.

At the same time, Congress manifested its intent to protect citizens of the United States against a limited

class of conspiracies affecting the exercise of the elective franchise at Congressional elections by leaving Sec. 5508 Rev. Stat., (Sec. 19 Penal Code) on the statute book.

The reasons for the repeal and the conditions which made regulation by the Federal Government over Congressional elections inexpedient, are set forth in the report of the Committee on the Repeal of the Federal Election Laws (53d Congress, 1st Session, Report No. 18). The report stated:

"The object of legislation should be to prevent conflicts between the State and Federal authorities. These statutes have been fruitful in engendering them. Enacted in reconstruction times, when it was deemed necessary to carry out those measures, the purpose for which they were framed having happily passed away, we feel that they can not be too quickly erased from the statute books." * * * * *

"Let every trace of the reconstruction measures be wiped from the statute books; let the states of this great Union understand that the elections are in their own hands, and if there be fraud, coercion, or force used, they will be the first to feel it. Responding to a universal sentiment throughout the country for greater purity in elections, many of our states have enacted laws to protect the voter and to purify the ballot. These, under the guidance of state officers, have worked efficiently, satisfactorily and beneficently; and if these Federal statutes are repealed that sentiment will receive an impetus which, if the cause still exists, will carry such enactments in every state in the Union."

It is manifest that Congress, in repealing these measures, acted according to the uniform construction which has been given to Section 4 of Article I of the Constitution of the United States, to the effect that, in ordinary cases,

it was more convenient and satisfactory to have the several states exercise *exclusively* the general control over Congressional elections and protect such elections from bribery and corruption than for the Federal Government so to do, and declared the public policy of the United States to be one of non-interference with the local laws of the States in this respect.

(g) SUBSEQUENT LEGISLATION.

The same general policy of leaving to the states the regulation and control of elections was followed in legislation under the Seventeenth Amendment to the Constitution of the United States, providing for the election of Senators by the people.

Act of June 4, 1914, Ch. 103, 38 Stat. 384, entitled, "An Act providing a temporary method of conducting the nomination and election of United States Senators," provided as follows:

"Sec. 2. That in any state wherein a United States senator is hereafter to be elected either at a general election or at any special election called by the executive authority thereof to fill a vacancy, until or unless otherwise specially provided by the Legislature thereof, the nomination of candidates for such office not heretofore made shall be made, the election to fill the same conducted, and the result thereof determined, as near as may be in accordance with the laws of such state regulating the nomination of candidates for an election of members at large of the national House of Representatives; Provided, that in case no provision is made in any state for the nomination or election of representatives at large the procedure shall be in accordance with the laws of such state respecting the ordinary executive and administrative officers thereof who are elected by the vote of the people of the entire

state; and provided further, that in any case the candidate for senator receiving the highest number of votes shall be deemed elected.

"Sec. 3. That section two of this act shall expire by limitation at the end of three years from the date of its approval. Approved June 4, 1914."

The report of the Commission to Revise and Codify the Criminal and Penal Laws of the United States made to the Senate of the 57th Congress is significant.

That part of the report dealing with offenses against the elective franchise, stated

"While the commission is of the opinion that the enactment of adequate legislation for the punishment of fraud, bribery, etc., at elections for Representatives in Congress would be highly proper, especially as some of the States have no laws for the punishment of such offenses, it did not feel justified in reporting the same in view of the fact that provisions of that character previously adopted were repealed in 1894, and that no subsequent effort has been made by Congress for their re-enactment."

Document 62, Part 2, Page 9.

The decision of this Court in *James vs. Bowman*, 190 U. S. 127; 23 Sup. Ct. Rep. 678 construing and holding unconstitutional Sec. 5507 Rev. Stat., is important in view of the present contention of the Government that Sec. 37 can properly be construed to apply to a conspiracy to bribe electors at a Congressional election.

Section 5507, Rev. Stat.; 16 Stat. at Large, made it a crime among other things for any person

"to prevent, hinder, control or intimidate another person from exercising the right of suffrage to whom that right of suffrage is guaranteed, by means of ** bribery, etc".

This section of the Revised Statutes was not repealed in 1894 but in 1903 was declared unconstitutional in the Bowman case.

It was urged that Congress had power under Art. I, of Sec. 4 of the Constitution to legislate in respect to the election of Representative in Congress; that bribery took place at such election as alleged in the indictment; and that, therefore, the statute should be construed to apply to bribery at Congressional elections and the indictment sustained.

While there is no question in the case at bar of the constitutionality of Sec. 37, yet a somewhat similar contention is now made to the effect that a statute general in its terms should be held to apply to a specified subject matter, to wit, the regulation of the elective franchise at Congressional elections.

The court said:

"The difficulty with this contention is that Congress has not by this section acted in the exercise of such power. It is not legislation in respect to the elections of Federal officers, but is leveled at all elections, state or federal, and it does not purport to punish bribery of any voter, but simply of those named in the Fifteenth Amendment. On its face, it is clearly an attempt to exercise power supposed to be conferred by the Fifteenth Amendment in respect to all elections and not in pursuance of the general control by Congress over particular elections. To change this statute enacted to punish bribery of persons named in the

Fifteenth Amendment at all elections, to a statute punishing bribery of any voter at certain elections, would be in effect judicial legislation."

Congress never attempted to meet the difficulty pointed out by the Court by passing any act to regulate the election of Federal officers by punishing bribery at a Federal election since that decision, but repealed the section.

The Bowman case, decided in 1903, after the repeal of the statute making bribery at Congressional elections a crime, holding that section 5507 of Rev. Stat., which was not repealed in 1894, was unconstitutional, further held that in the then existing state of Federal legislation (which has not been changed to the present time) the United States had no power to punish bribery at a Congressional election, Congress not having taken any action in respect to making such acts, offenses against the United States under Art. I, Section 4 of the Constitution.

The Court said:

"We are fully sensible of the great wrong which results from bribery at elections, and do not question the power of Congress to punish such offenses when committed in respect to the election of Federal officials. At the same time, it is all important that a criminal statute should define clearly the offenses which it purports to punish, and that, when so defined, it should be within the limits of the power of the legislative body enacting it. Congress has no power to punish bribery at all elections. The limits of its power are in respect to elections in which the nation is directly interested, or in which some mandate of the national Constitution is disobeyed; and courts are not at liberty to take a criminal statute, broad and comprehensive in its terms and in these terms beyond the

power of Congress, and change it to fit some particular transaction which Congress might have legislated for if it had seen fit."

It seems, therefore, abundantly clear from the language of Art. I, Sec. 4 of the Constitution itself, from the nature of the subject matter, and from the legislative enactments under Art. I, Sec. 4, and the judicial decisions thereon, that Congress never intended, when it passed Sec. 37 in its present form, to confer jurisdiction by force of the second clause of *that Statute* over matters involving the exercise of the elective franchise at Congressional elections; and to now construe the statute to that effect would be to construe the statute directly contrary to the rule of construction followed where the respective jurisdictions of the United States and the States are involved, and contrary to the declared public policy of the United States as shown by the repeal of 1894 of the Statutes of 1870-1871, and by the legislation subsequently enacted.

II.

THE COURTS OF THE UNITED STATES HAVE NO JURISDICTION TO PUNISH A CON- SPIRACY TO BRIBE ELECTORS AT A CONGRES- SIONAL ELECTION.

The gist of the indictment is found in the third paragraph of the first count (record page 4) in which it is alleged that

"said defendants did * * conspire * * to * * bribe, and after having * * influenced and bribed to vote and cause to be voted for a candidate for Representative in Congress at said election * * in said town of Coventry a large number of persons who had * * * the qualifica-

tions requisite for electors for said Representative in Congress, * * and with intention to defraud the United States to * * influence and bribe, and after having so * * influenced and bribed to vote and cause to be voted for a candidate for Representative in Congress at said election, * * a large number of * * citizens of the United States of America who were qualified to vote for said Representative in Congress, etc."

It is clear that if there is no jurisdiction in the Federal Courts to punish bribery of electors at a Congressional election, still less is there power to punish a conspiracy to influence electors by the use of intoxicating liquor as alleged in the same count.

In the final analysis, therefore, it must be said that the indictment rests on the proposition that the United States now has power to punish in its courts, a conspiracy to bribe voters at a Congressional election.

There is at the present time no statute of the United States which denounces bribery or conspiracy to bribe electors at a Congressional election as crimes against the United States, and if the indictment had alleged directly either bribery at such an election, or a conspiracy to commit an offense against the United States by bribing electors, under the first clause of Sec. 37, such an indictment could not have been maintained.

The Government, therefore, in order to escape the obvious consequences of a direct allegation of bribery, or of conspiracy to commit an offense against the United States by bribing electors, has set forth an alleged conspiracy to bribe voters at a Congressional election and has denominated these allegations a conspiracy to defraud the United States, and claims jurisdiction to punish such alleged acts under the second clause of Section 37 of the Penal Code.

Whether an indictment setting forth a conspiracy to bribe electors at a Congressional election with completed acts of bribery charged as overt acts, be denominated a conspiracy to commit an offense against the United States, or a conspiracy to defraud the United States is immaterial in view of the broad questions presented by the record in this case.

The essential question is this: have the Courts of the United States jurisdiction to punish bribery or conspiracy to bribe electors at a Congressional election, or stated in another form; has Congress reserved its power under Sec. 4, Art. I of the Constitution to legislate respecting bribery at such elections and relegated thereby power and jurisdiction to deal with such matters to the States?

The learned Court in its opinion in this case pertinently said:

"A charge of conspiracy to bribe, with bribery as an overt act, may bring before the Court substantially the same questions as if the statute were directly against bribery.

"The political considerations of the relations between the people of the State and the National government are substantially the same in both cases.

"If for reasons of public policy, the constitutional power to legislate in the one case has been reserved, it seems inconsistent that it should have been exercised in the other." (Opinion, record page 46)

Under Sec. 5511, Rev. Stat., bribery at a Congressional election was a crime and therefore under the first clause of Sec. 5540, Rev. Stat., a conspiracy to bribe at such elections was a conspiracy to commit an offense against the United States.

An indictment alleging the essential elements of the indictment in the case at bar would have stated a case under the first clause of Sec. 37, Sec. 5440 Rev. Stat.

But by the repeal of Sec. 5511, Rev. Stat., making bribery at Congressional elections a crime, bribery ceased to be an offense against the United States, and at the same time, conspiracy to bribe ceased to be a crime under the first clause of Sec. 5440, Rev. Stat.; neither bribery or conspiracy to bribe at Congressional elections remaining crimes against the United States.

If Congress from broad considerations of public policy reserved its power over such a general class of cases and denied further jurisdiction over them to the Federal Courts, it cannot be said with any show of reason that the United States under the second clause of Sec. 37 is still invested with jurisdiction over identically the same subject-matter, or that Congress intended the second clause of that section to have such scope.

The United States cannot indirectly, under the peculiar frame of this indictment, punish acts which it has no power to punish directly either as bribery under Sec. 5511, or conspiracy to bribe under the first clause of Sec. 37, Rev. Stat. 5440.

It is submitted that to construe the second clause of Sec. 37 as vesting jurisdiction over cases of bribery at Congressional elections would be to frustrate the evident intent of Congress in its repeal of the legislation of 1870 and 1871, respecting bribery at Congressional elections, and to read such clause, an intent which Congress never designed it to bear.

III.

THE UNITED STATES CANNOT MAINTAIN AN INDICTMENT FOR CONSPIRING TO DEFRAUD THE UNITED STATES BY THE BRIBERY OF ELECTORS AT A CONGRESSIONAL ELECTION IN THE ABSENCE OF A STATUTE DECLARING OR DEFINING THE RIGHTS OR FUNCTIONS, IN RESPECT TO WHICH IT IS ALLEGED THE UNITED STATES WAS TO BE DEFRAUDED AS ALLEGED IN THE INDICTMENT.

U. S. vs. Keitel, 211 U. S. 370.

U. S. vs. Waddel, 112 U. S. 76.

U. S. vs. Harris, 106 U. S. 629.

U. S. vs. Mosley, 238 U. S. 383.

The charge of the indictment is that by bribery and corruption at a general election held in Rhode Island on November 3, 1914 at which a Congressman was to be elected, the defendants conspired by bribery and other forms of corruptions to deprive the United States of a right to a "fair and clean election".

The charge of the indictment in both counts is as follows:

"And it was the intention of the said defendants to defraud the United States of American by depriving it of its lawful right to a fair and clean election, on, to wit, November 3, 1914, at which time a Representative in Congress of the United States was to be, and, in fact, was voted for, chosen and elected, * * * * * and it was the further intention of the * * * defendants to obstruct, impair, corrupt and debauch the election * * * and so deprive the United States * * * of its lawful

right to have a Representative in Congress, who was to be voted for at said election, elected fairly and in accordance with law." (record pages 10-11)

These allegations are drawn on the theory that although the United States has no penal legislation on its statute book, making bribery, or use of intoxicating liquor at Congressional election, crimes, yet in view of the fact that the election of a member of the National House of Representatives was involved, that the United States has thereby certain rights in the premises, among them, the right to have such an election "fair and clean," or as related to the facts alleged in the indictment, to have an election free from the bribery of electors and from debauchery by the use of intoxicating liquor; that such right is violated by a conspiracy to bribe electors and to dispense liquor as alleged and hence the United States can maintain an indictment under the second clause of Section 37 of the Criminal Code of the United States on the theory that it has been defrauded.

Construing the indictment the lower Court said:

"The right of the United States in respect to these elections is a constitutional right to legislate or not to legislate as is deemed expedient or necessary. With this right, or with its exercise, no interference is charged in the indictment. But it is said that there is also in the Government a right to have its Senators and Representatives elected fairly and in accordance with law, even when Congress has not legislated to define the right. It is inaccurate to say that the indictment charges a conspiracy to defraud the Government of this right, nor can it be said that it is charged that the United States is obstructed in the performance of any active function in respect to this right. It may be said

that this theoretical right is violated by doing what is inconsistent with it, and that a violation of the right is in a sense a fraud upon the United States." (Opinion, record page 44)

And further on said in relation to the contention advanced by the Government:

"In fact, if a violation of a theoretical constitutional right of the Government not declared by statute is to be deemed a fraud, the conspiracy statute will be so broadened as to expand it beyond the scope of legislative foresight. Repugnancy to a reserved constitutional power of Congress to enact law can hardly be a practical test of fraud. Inconsistency with what Congress has power to protect, but has not protected, by law, or with reasons why it might legislate, if it saw fit, is not a satisfactory test of what shall constitute a defrauding of the United States under Section 37." (Opinion, record page 47)

In considering this question, it may be conceded at this point that the word "defraud" as used in Section 37 of the Penal Code of the United States has a broader meaning than it had at common law.

United States vs. Keitel, 211 U. S. 370; 29 Sup. Ct. Rep. 123.

And it may further be admitted under the decisions construing the second clause of Section 37 of the Penal Code of the United States, that the statute is sufficiently broad to embrace within its concept a conspiracy to assail or obstruct the administration or execution of a law of the United States, or to impair, or assail any administrative function of the United States; and it may be further said that the right or function of the United States which was

to be violated need not necessarily be founded on any penal enactment, but that Section 37 may embrace a conspiracy to assail or obstruct the administration of a law of the United States not penal in its character.

But, it is the contention of the defendants, that some provision of positive law creating, defining or declaring the right which was to be violated must be invoked by the Government under the peculiar constitutional provision which governs legislation in this field in order to ground an indictment under Section 37 of the Penal Code of the United States.

The only two clauses of the Constitution which have any bearing on the general subject of Congressional elections are, Sec. 2 of Art. I, which provides that:

"The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

and Sec. 4 of Art. I, which provides that:

"The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof, but the Congress may at any time by law make or alter such regulations except as to the places of choosing senators."

Sec. 2, Art. I, has no application to the subject-matter of the indictment.

This section provides for the election of Representatives in Congress, fixes the qualifications of electors, and creates a constitutional right in citizens of the United

States, having the qualifications pointed out by the section, to vote for Representatives in Congress, and to have such votes counted towards the result of the election.

This right is protected against conspiracies by Sec. 19 of the Penal Code.

U. S. vs. Mosley, 238 U. S. 383.

The conspiracy was not leveled against this right or its exercise in any manner.

There is no allegation in the entire indictment that the conspiracy contemplated any action to prevent the registration of voters, obstruction of any citizen in voting, or any acts to prevent a return or counting of the votes cast at the election.

Neither did the conspiracy contemplate the registration of persons not qualified, nor any plan to cause any person to vote who was not qualified thereunto.

What is alleged, is, that the United States was to be deprived of the "right to a fair and clean election" by the bribery of electors and the corruption of the election by the use of intoxicating liquor.

In comparing the two sections of Art. I of the Constitution, it is manifest that the protection of the elections of Congressmen from bribery and corruption is a matter to be regulated under Sec. 4 of the Article in question,

James vs. Bowman, *supra*.

Ex partr, *Siebold*, *supra*.

and hence the rights of the United States in respect to the protection of such elections from bribery are to be determined by the provisions of this latter section.

Sec. 4 of Art. I does not of itself create any juridical rights which can be made the basis of an indictment. It is a *grant of power* to regulate the conduct of the elections and the power is vested primarily in the States and ultimately in the Federal Government.

It is clear, as has been previously argued, from the language of Sec. 4 of Art. I itself that Congress must take action before the United States is vested with any enforceable rights in the premises.

Congress is given the full power to create rights and privileges in connection with the manner of conducting Congressional elections, power to protect the same from bribery, corruption or undue influence of any kind, and to make such administrative regulations for conducting such elections as it sees fit, but until it does take action each State in its own sovereign capacity has the right secured to it by the Constitution of the United States to occupy the particular field with legislation of its own.

The doctrine contended for by the defendants was lucidly stated in

U. S. vs. Waddell, 112 U. S. 76.

The case involved Sec. 3 of Art. IV of the Constitution which provides that,

"Congress shall have power to make all needful rules and regulations respecting the territory and other property of the United States."

An information was brought under Sec. 5508, Rev. Stat., and involved an alleged conspiracy to intimidate and oppress a citizen of the United States in the exercise of his rights in regard to the public lands of the United States.

While a different section of the Constitution was involved, yet, the principle laid down by the court in this case, is applicable to the case at bar, the two provisions of the Constitution involved being similar in this that both are grants of power to make regulations.

The Court said:

"The right assailed, obstructed and its exercise prevented, or intended to be prevented, as set out in this petition, is very clearly a right wholly dependent upon the Act of Congress concerning the settlement and sale of the public lands of the United States. No such right exists, or can exist outside of an Act of Congress."

The Government apparently admits that the right of the United States to an election free from bribery of electors must be defined or declared by statute in order to ground an indictment under Sec. 37, and it maintains that Sec. 19 is such statute.

The argument is that Sec. 19, which protects the right of a citizen of the United States to vote and to have his vote counted should be extended to embrace conspiracies which aim at bribery.

The Government argues:

"There is a right that the vote shall have its proper weight and be placed in competition with those votes only which are fairly and rightfully cast. How would it benefit a citizen to have his vote cast and counted if its potency was entirely destroyed by bribery, fraud and intimidation of other voters." (Brief of the United States, page 12)

The argument then proceeds, after citing *Ex parte Yarbrough*, that if each citizen in the community has such

a right, then the United States as a body made up of voters must necessarily possess the right under this statute, and hence the United States was to be defrauded of this right by the alleged conspiracy. (Brief of the United States, page 17).

The argument is open to fatal objections:

(a) The statute does not declare or protect rights of the United States, but expressly protects the free exercise of *rights of citizens of the United States* secured to them under the Constitution or laws of the United States.

(b) Whatever the rights may be, protected under this statute, such statute does not extend to the protection of elections from conspiracies to bribe voters.

The language of the Act is confined to the protection of citizens from conspiracies directly aimed to injure or oppress *them* in the exercise of Federal rights.

True it is that the statute goes beyond acts of violence in the protection it affords, but it is none the less true that it does not embrace conspiracies which may have the speculative, uncertain and indirect results as argued by the government.

Such remote consequences are not within the purview of Sec. 19 under any known principle of construction.

(c) The theory of the government that the United States as a corporate entity has the right supposed to be declared by this statute because the voters of the nation possess such rights individually is a theory not warranted by any principle of Constitutional law or by the decisions of any Court.

(d) *Ex parte Yarbrough* does not support the argument made by the Government.

It decided that Congress could constitutionally under Secs. 5508 and 5520 Rev. Stat. protect citizens in the right to vote from conspiracies contemplating violence; it also held that Congress possessed full power to protect elections from fraud, violence or bribery by appropriate legislation under Art. I, Sec. 4 of the Constitution, and the whole reasoning of the Court was directed to the establishment of these propositions.

It therefore appears from the language of Art. I, Sec. 4, that the United States is not invested by force of the Constitution with any present, legal, enforceable rights, relating to bribery of electors at Congressional elections, which it may enforce or protect in its own courts in the absence of Congressional legislation.

The only provisions of the statute law of the United States now in force regulating the election of members of the House of Representatives, are,

Sec. 25, Rev. Stat., providing for a uniform time of electing Representatives in Congress.

Sec. 27, Rev. Stat., providing for election by printed or written ballots and authorizing the use of voting machines, and

21 Stat. L., 733, Act of Jan. 16, 1901, Chap. 93, providing for a new apportionment of members and requiring the election to be by districts in each State.

Acts of June 25, 1910, Chap. 392, and of Aug. 19, 1911, Chap. 33, providing that candidates for Representatives in Congress shall make certain returns of election expenses.

The remaining provisions respecting elections are found in Chap. III of the Penal Code entitled, "Offenses Against the Elective Franchise and Civil Rights of Citizens," and include Sec. 19 before referred to, and Secs. 22, 23, 24 and 26, which make unlawful interference by the military forces of the United States with certain elections.

This being the condition of Federal legislation under Art. I, Sec. 4 of the Constitution, it is clear that the entire regulation and control and protection of the election of Representatives in Congress, except as above provided, is now vested in the several states.

No statute of the United States defines or punishes bribery of electors, and no one can reasonably contend that this Court has jurisdiction under any statute of the United States to punish bribery at a Congressional election.

Such acts may be crimes against the State of Rhode Island, but they assuredly do not constitute crimes against the United States by force of any provisions of the Penal Code of the United States. No right of the United States as declared and defined by any provision of its criminal law has been violated.

More than this, it further appears that the United States has now no administrative function of any character which it is by law entitled to perform or execute at a Congressional election; no Federal officer can lawfully interfere at a Congressional election with the conduct thereof, and neither are the election officers of the state brought under Federal supervision by force of any statute of the United States.

The entire administration relating to the election of a

Congressman is now as exclusively vested in state officers as are the elections of state or municipal officers.

Wherein, therefore, can it be said that the United States has any legal, enforceable, right or privilege to a "fair and clean election" as the phrase is used in the indictment, when such right is not declared by the Constitution, or by any statute of the United States, is not created or implied by the existence of a body of administrative laws or regulations of the United States, and is not defined by any criminal statute of the United States, giving the United States courts power to punish as crimes such acts as are alleged in the indictment?

If there is no function which it is the duty of any officer of the United States to carry out, if the United States under the law as it now stands, has no power to interfere in an election to prevent bribery, nor to repress the same by criminal process in its courts, where is the right of the United States as now contended for, and wherein has it been defrauded, and of which legal right has it been deprived which it may protect in its courts?

The answer to these questions is plain.

Under Art. I, Sec. 4 of the Constitution, the several states are now the source of all rights respecting the protection of Congressional elections from bribery of electors; with the conduct of such elections, save as provided under Sec. 19 of the Penal Code the United States has nothing to do.

The states create the Congressional Districts, create and administer the machinery whereby the elections are conducted, keep the peace at the polls, define and punish

the crime of bribery, and by various methods protect the purity of the ballot, for Congressional as well as state elections.

The rights, therefore, which were to be violated plainly appear to be rights created by and vesting in the States and not in the Federal Government.

In further consideration of the question whether Sec. 37 can be construed to embrace rights not defined or declared by statute under Art. I, Sec. 4 of the Constitution, the inevitable results of such a construction may properly be adverted to.

In at least two aspects such a theory of the scope of the statute would expand it far beyond "legislative foresight", and cause it to apply to matters never in the contemplation of Congress.

Whatever may be the meaning of the term, "right to a fair and clean election," which is the foundation of the indictment, and against which the alleged conspiracy was aimed, its meaning is not fixed by the common law, nor by any statute of the United States or of the State of Rhode Island.

If it means a right defined by a State statute protecting elections from bribery and from the illegal sale of intoxicating liquor, then the Government is in the position of attempting to enforce rights arising under State statutes not adopted by Congress, a point discussed under point IV, post, page 51 herein.

If it is a right not dependent for definition upon, or circumscribed by State statutes, then it is of such wide import that it cannot be defined in any manner since there is no Federal statute on the subject.

Any act which might be deemed detrimental to the fairness of an election, or which influenced unduly the action of an elector may fairly be said to prevent a "fair and clean" election.

Bribery or the use of intoxicating liquor are not the only methods of unduly influencing the action of an elector, or the only methods by which an election can be corrupted or debauched, and under the wide concept of the rights of the United States embraced in the phrase "fair and clean election" what acts influencing electors would fall within and what without Sec. 37 could only be determined by a long course of judicial legislation.

Again, if Sec. 37 be construed to protect Congressional elections from acts prejudicing the freedom or fairness of the election, it necessarily follows that the statute also extends to the protection of the executive and the judicial branches of the Government.

Nothing can be found in the statute to limit the application thereof to the election of members of the legislative branch if the theory of the Government in this case be sound.

The United States has as great an interest in, and may with equal force to be said to have as great right to the fair and free election of a President, or presidential electors as it has to the free and fair election of Representatives in Congress.

It is true the method of election is different, but the rights of the United States in respect to the election of a President can be no less nor of a different character, if the theory of the Government is correct under Sec. 1,

of Art. II of the Constitution than are the rights under Sec. 2 of Art. I. Both sections provide for an election to fill certain branches of the Government. A conspiracy to procure the election of a certain candidate to the Presidency by acts which impair the fairness or freedom of the election, as those terms are used in the indictment, would equally with such a conspiracy as is set out in the indictment, be a conspiracy to defraud the United States under Sec. 37, if Sec. 37 has the wide scope contended for by the Government.

The logic of the position of the Government obliges them to maintain that Sec. 37 was intended to go far beyond the protection of the operations of the organized government, from conspiracies to impair or assail such legally defined functions, and to include in its scope any and all acts, none of them defined, which might in any way be considered to affect unduly the freedom or fairness of the operation of the agencies pointed out by the Constitution to create the great departments of government.

It is inconceivable that Congress ever designed the second clause of Sec. 37 to reach and punish such acts, in a field so wide and important, and presenting questions so different in kind from those falling in the category of acts of fraud.

U. S. vs. Harris, 106 U. S. 629.

It is submitted, therefore, that there being no legislation, penal or administrative, vesting the United States with any control or authority over Congressional elections in respect to bribery or the use of intoxicating liquor or declaring or defining its rights in the premises, the United States was not assailed in the exercise of any present legal and enforceable rights which it was entitled to protect from

the alleged acts set forth in the present indictment, and hence, the indictment fails to show that the United States was to be defrauded in respect to anything which it was legally entitled to protect under Sec. 37 of the Penal Code of the United States.

IV.

THE UNITED STATES CANNOT MAINTAIN AN INDICTMENT FOR CONSPIRING TO DEFRAUD THE UNITED STATES BASED ON THE ALLEGATIONS OF A CONSPIRACY TO VIOLATE THE PENAL LAWS OF THE STATE OF RHODE ISLAND PROHIBITING BRIBERY AT ELECTIONS HELD WITHIN THAT STATE.

AUTHORITIES.

- Cooley vs. Board of Port Wardens*, 12 How. 299.
Huntington vs. Attrill, 146 U. S. 657.
Pettibone vs. U. S., 148 U. S. 197.
Sho-Shone Mining Co. vs. Rutter, 177 U. S. 505.
Ex parte Siebold, 100 U. S. 717.
Swin vs. Breedlove, 2 How. 29.
U. S. vs. Morrissey, 32 Fed. 147.
U. S. vs. Reese, 92 U. S. 241.

The indictment not only sets up a conspiracy to defraud the United States by the bribery of electors, and by the use of intoxicating liquor, but further asserts as a foundation of the power to indict the defendants, that the defendants conspired to defraud the United States by violating the laws of the State of Rhode Island, relating to bribery at elections, and to the sale of intoxicating liquor.

One theory of the indictment apparently is that by a conspiracy to bribe electors at a Congressional election, and to violate the liquor laws of the State the United States was to be fraudulently deprived of the protection of the State laws enacted to prevent the bribery of electors at Congressional as well as at state elections, and to prevent the sale of liquor on election days.

The indictment sets up among other things a conspiracy to violate the laws of Rhode Island, making bribery at any election a crime. The portion of the indictment alleging these facts is as follows:

"Said defendants conspire * * * to defraud the United States of America by committing a wilful fraud upon the laws of the State of Rhode Island made and provided for the control and protection of elections held within said State of Rhode Island, to wit, Section 3 of Chapter 20 of the General Laws of Rhode Island, 1909, which reads as follows:

"Sec. 3. Every person who shall directly or indirectly give or offer or agree to give to any elector or to any person for the benefit of any elector any sum of money or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote at any election in this State or by way of reward for having voted or withheld his vote, or who shall use any threat or employ any means of intimidation for the purpose of influencing such elector to vote or withhold his vote for or against any candidate or candidates or proposition pending at such election, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment of not less than six months nor more than two years, or by both such fine and imprisonment in the discretion of the court, and no person after conviction of such offense shall be permitted to vote

in any election or upon any proposition pending before the people, or to hold any public office; and no evidence given by any witness testifying upon the trial of any charge of bribery shall be used against the person giving such evidence.' " (record pages 6 and 7)

For the purposes of this argument, it will be sufficient to consider the allegations of the indictment respecting the violation of the law of Rhode Island making bribery at elections a crime, for if a conspiracy to violate such a law is not an offense which the United States may prosecute under Section 37 of the Penal Code of the United States a fortiori, it is not an offense under Section 37 to conspire to violate the laws of Rhode Island respecting the sale of intoxicating liquor.

The position of the Government in respect to these allegations of the indictment is apparently this: the law of Rhode Island recognizes and creates a right to have an election of a Representative in Congress free from bribery, by the force of the statute which denounces bribery of an elector at such an election a crime; such right was violated by the alleged conspiracy to bribe, and that the statute being passed to protect Congressional as well as State elections, it was passed in the interest of the United States, and confers certain rights on the United States of which the United States was to be defrauded by the alleged conspiracy to bribe; therefore, the United States can enforce and protect such right from violation under the second clause of Section 37 of the Penal Code.

It is not enough to say that the United States under this indictment is only seeking to enforce its rights under Sec. 37.

It is evident under the frame of the indictment that the State statute is the foundation of the right which the govern-

ment alleges was to be assailed by the alleged conspiracy as set forth, and unless these rights which were created under State statutes confer a right on the United States in respect to the bribery of electors at a Congressional election, the indictment in this aspect must be pronounced bad.

Prima facie, under the ordinary doctrines governing the powers of the States and their relations to the United States, if a State statute, penal in character, on a subject over which the State has power to legislate is violated, the right which is infringed is the right of the State sovereignty which enacted the legislation, and that sovereignty alone has power to punish a violation thereof, or to adopt the theory of the indictment, to protect whatever rights may arise under such statutes.

"Crimes and offenses against the laws of any state can only be defined, prosecuted and pardoned by the sovereign authority of that state; and the authorities, legislative, executive or judicial, of other states take no action with regard to them, except by way of extradition, to surrender offenders to the state whose laws they have violated, and whose peace they have broken."

Huntington vs. Attrill, 146 U. S. 657; 13 Sup. Ct. Rep. 224.

The decision of the Court in *Pettibone vs. United States*, 148 U. S. 197; 13 Sup. Ct. Rep. 542, is extremely pertinent in its application to the facts in this case.

In that case, defendants were indicted under Rev. Stat. 5399 and 5440, for conspiring to obstruct the administration of justice in the Federal Courts, and it was charged that the defendants conspired to use force and fraud to interfere

with the relation between an employee and his employees and that they did so pending an injunction from the Circuit Court of the United States.

The acts which it was charged the defendants conspired to commit were offenses against the laws of the State of Idaho, but were not offenses against the United States.

The Court said:

"The defendants could neither be indicted nor convicted of a crime against the state in the Circuit Court, but their offense against the United States consisted entirely in the violation of the statute of the United States by corruptly, or by threats or force, impeding or obstructing the due administration of justice. If they were not guilty of that, they could not be convicted; and neither the indictment nor the case can be helped out by reference to the alleged crime against the state, and the defendants be punished for the latter under the guise of a proceeding to punish them for an offense which they did not commit."

Under what theory, therefore, of the relations between the state governments and the federal government can it be said that the Federal government has the right and power in the absence of a specific statute adopting State legislation to lay hold of a State statute as the foundation of a criminal action in the courts of the United States?

In what manner or by what process did the rights arising under a state statute adapted and intended to be enforced in the State tribunals become transmuted into legal rights of the United States, which could be protected from violation in the Courts of the United States under Section 37?

It may be argued that the States are acting in some sort

as the agents of the United States in enacting and enforcing statutes designed to prevent bribery at Congressional elections, by reason of the language of Section 4, Article I of the Constitution of the United States.

While it may be true that in the absence of Congressional action, the states owe certain duties to the United States to protect Congressional elections, and the United States has the right to such protection, yet this is true only in the sense that the rights and duties are political in their nature, and are not judicial rights which can be made the basis of legal action.

Further, that while it is true that state officials may act as the agents of the Federal government in various matters as was pointed out in the *United States vs. Jones*, 109 U. S. 531; and that the United States may in certain fields adopt State statutes, *Cooley vs. Board of Port Wardens*, 12 How. 299, yet such a departure from the ordinary methods of administration and legislation has always been by force of express enactment.

The proposition underlying the counts in question is of a different nature.

The proposition must be that in the enactment of State legislation the legislatures of the various States are acting as legislative agents for the United States, and for its benefit, so that whatever laws they pass in reference to the protection of Congressional elections enure to the benefit of the United States and create rights which the United States can avail itself of.

An examination of the Constitutional clause in question and the construction which has been given it demonstrates the unsoundness of the contention.

As has been shown in the previous portions of this brief, it was thought better to leave the regulation and protection of elections primarily in the hands of the states, as being the best acquainted with the needs of the people of the various localities in this respect. It was designed to vest in the States some measure of self government in the election of their representatives.

The Government cites *Ex parte Siebold*, 100 U. S. 371 (Brief of United States, page 8), in support of its theory.

The precise point involved was the constitutional power of Congress to enact Sec. 5515, Rev. Stat., which made criminal violations of duty by election officers at Congressional elections including State officers as well as officers of the Federal Government.

The statute was held constitutional as within the power of Congress to regulate elections under Art. 1, Sec. 4 of the Constitution in any way it saw fit or expedient so to do.

The case does not hold that in the event that Congress reserves its powers, and in the absence of statute adopting the same, that state statutes, affecting Congressional elections found Federal rights, which the United States can protect in its own Courts.

The capacity in which the state legislatures act under Sec. 4, Art. I of the Constitution was clearly put by Madison in that portion of his argument before the Virginia Convention, quoted *supra* page 20 herein. He said:

“And considering the state governments, and the general government as distinct bodies, acting in different

and independent capacities for the people it was thought the particular regulations should be submitted to the former and the general regulations to the latter."

In other words, the local governments in their sovereign capacities and not as agents of the United States were left in free and complete control of the field, unless Congress by rule should see fit to occupy the field.

To say that the laws which have been passed by the states in regard to Congressional elections have been passed for the benefit of the United States to such an extent that the United States can lay hold of these statutes and enforce such statutes in its own courts would be to frustrate the very evident intent of this constitutional provision, and vest in the United States Courts a jurisdiction, which is now left to the States by the declared policy of Congress.

The doctrine that the states of the Union have any legislative powers conferred on them by the Constitution to legislate for the United States was emphatically denied by Chief Justice Marshall.

In the case of *Wayman, et al. vs. Southard, et al.*, 10 Wheaton 1, the Chief Justice said at page 48:

"If Congress cannot invest the Courts with the power of altering the modes of proceeding of their own officers, in the service of executions issued on their own judgments, how ill gentlemen defend a delegation of the same power to the state legislatures? The state assemblies do not constitute a legislative body for the Union. They possess no portion of that legislative power which the constitution vests in Congress, and cannot receive it by delegation."

But even if it could be maintained that a theoretical right was vested in the United States by the action of the State legislatures in the absence of specific legislation adopting such legislation, yet the question is still to be answered, did Congress intend by Section 37 to give the United States power to enforce such rights whatever they are?

Did Congress intend when it enacted Section 37 in its present form to bring into the Courts of the United States for adjudication rights founded on State statutes?

The doctrine of this court is clear that adoption of state statutes as the foundation of Federal rights will not be implied, but can arise only by force of express enactment.

In *Sho-Shone Mining Co. vs. Rutter*, 177 U. S. 505; 20 Sup. Ct. Rep. 726 (1900) a statute of the United States provided that suits involving certain mining claims might be begun in a "court of competent jurisdiction." It was contended that as all the claims were founded on patents or grants from the United States that it was a case arising under the laws and Constitution of the United States, and that the statute was enacted under the grant of power to make "regulations * * respecting the territory or other property of the United States".

The Court held that the courts of the United States had no original jurisdiction in the case, as the statute did not expressly so provide.

The court said:

"The recognition by Congress of local customs and statutory provisions as at times controlling the right of possession does not incorporate them into the body of Federal law. Section 2 of Article I of the Constitution

provides that the electors in each state of members of the House of Representatives 'shall have the qualifications requisite for electors of the most numerous branch of the state legislature,' but this does not make the statutes and constitutional provisions the various states in reference to the qualifications of electors parts of the Constitution or laws of the United States."

As illustrating the extreme caution with which the Supreme Court has dealt with even express legislation, which conferred powers on the Federal Courts to adopt and enforce the laws of the states, the case of *Swinn vs. Breedlove*, 2 How. 29, may be cited.

In this case a law of Mississippi made a sheriff liable for false return for moneys collected and not turned over, and also provided for a penalty for such failure to comply with his duties in these respects, which penalty could be enforced by summary action or by indictment. A marshall of a United States Court in Mississippi was proceeded against in the Federal Courts both for the amount not turned over and for the penalty, and it was argued in behalf of the Government that, by force of Act of Congress, 1829, called the Process Act, whereby the laws of the several states in regard to process were made the rule for the Federal Courts, the penalty could be collected.

The court refused to enforce the penalty, saying:

"The recovery of the penalty could with quite as much propriety have been on conviction by indictment as on summary motion; and in neither mode can it be plausibly contended that the courts of the United States could inflict the penalty on its marshall. * * This being an offense against state law, the courts of the state alone could punish its commission; the courts of the United States having no power to execute the penal laws of the individual states."

Not only is the Court asked to construe Section 37 to cover a case where no Federal right is declared by statute, but the Court is also asked to extend the operation of the statute to include State statutes within its scope and thus bring the Federal Courts into a field of jurisdiction where under the present state of legislation, the States have full powers to act.

That a statute will not be construed to bring about such a result in the absence of express enactment, we have already pointed out in this brief.

The legislation of Congress in respect to the adoption of state laws, while not conclusive, is persuasive that the doctrine contended for by the defendant is correct.

Under Secs. 5511, 5512 and 5515, Rev. Stat. Congress, by express enactments did, in 1870, adopt certain state statutes relating to the casting, counting, preservation and return of votes at a Congressional election, as part of the Penal Code of the United States, by providing that violation of the duties in this respect imposed by State laws on State officers was likewise a crime against the United States.

Congress was of the opinion that express action was necessary on its part to punish such derelictions of duty on the part of State officers, even where a Congressional election was involved, before the United States was invested with any rights over the subject matter.

It is to be noted that the sections of the Revised Statutes under consideration did not go to the length of adopting State statutes relating to bribery or corrupt practices, but specifically provided what State statutes were

to be deemed laws of the United States for the purpose of punishment thereof in the Federal Courts.

Miller, J., in his opinion *In re Coy*, 127 U. S. 731, thus characterized the situation brought about by these provisions.

"This anomalous condition makes the question of the applicability of the laws of Congress on this subject under the state statutes for the regulation of the casting, returning and counting of votes, somewhat complex."

This "anomalous condition" caused much perplexity and led to conflicts of authority, and even the constitutionality of this provision was doubtful. (See dissenting opinion of Mr. Justice Field in *Ex parte Siebold*, 100 U. S. 717).

And Mr. Justice Brewer in *United States vs. Morrissey*, 32 Fed. 147, referred to Sec. 5515 as on "the border line of Federal jurisdiction".

Congress rectified the situation when it repealed these sections in 1894.

The court is now asked to validate an indictment based on the theory that the laws of Rhode Island in respect to bribery of electors are in reality and essentially a part of the Federal Penal Code and vest in the United States *rights* which may be protected by indictment, in defiance of the fact that there is no Federal statute covering these alleged offenses, no Federal statute adopting such state laws as a part of the Federal Code, and in disregard of the declared policy of Congress to terminate the "anomalous condition" presented under the election laws of 1870, and to prevent discord and conflict between the states and the Federal government.

Under the theory on which the indictment is drawn, this anomalous condition is to be revived under Sec. 37 in a more aggravated form than existed under the comparatively limited scope of the statutes of 1870 and 1871 since the penal laws drawn into the Federal courts under this construction would embrace at least a great portion of the provisions of the corrupt practice acts passed by the States in relation to elections.

It would sweep into the Federal courts for consideration and punishment violations of a great variety of State legislation which has never been adopted or even considered by Congress, and which has been enacted without contemplation of Federal interference.

Another and necessary question is what State statutes are thus included within the scope of Sec. 37?

Does the right to a fair and clean election include all the statutes passed by the states which relate to elections held "within the state", and, if not, where is the line to be drawn?

Does the proper construction of Sec. 37, for instance, embrace a conspiracy to violate the State statutes regarding bribery, and not a conspiracy to violate a statute prohibiting the sale of liquor on election day?

All of these questions must be answered by the courts in the absence of legislation by Congress.

The court would be obliged to legislate in each case and decide without any Federal statute, what the right was, define the content thereof, and then decide whether or not the State statute was passed to protect it.

The situation thus presented is aptly described by this court in *U. S. vs. Reese*, 92 U. S. 241.

"It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the court to step inside and say who could be rightfully detained and who should be set at large. This would to some extent substitute the judicial for the legislative branch of the government."

The consequences of such an interpretation of Sec. 37 are so patent that it is unnecessary to labor the point further.

It is submitted, therefore, on principle and authority that the rights, if any, which have been infringed are rights created by the State of Rhode Island under Art. I, Sec. 4 of the Constitution of the United States, which rights are solely rights of the State of Rhode Island, and for the infringement whereof the State of Rhode Island alone has now jurisdiction to punish.

V.

THIS INDICTMENT IS NOT SUSTAINED BY THE AUTHORITY OF ANY DECISIONS IN THE COURTS OF THE UNITED STATES.

The indictment is evidently framed to bring it within the doctrine laid down in

Haas vs. Henkel, 216 U. S. 462; 30 Sup. Ct. Rep. 249.

Curley vs. United States, 130 Fed. 1.

U. S. vs. Aczel, 219 Fed. 917, (D. C. of Indiana) and 232 Fed. 652 (C. C. A. 7th Circuit).

Assuming that these cases hold that Section 37 of the Penal Code of the United States is broad enough in its scope to include a conspiracy to defraud the United States

by a scheme to impair its administrative functions, and the exercise thereof by its officers and agents, yet an examination of the cases shows that the present indictment is not within the doctrine of these authorities.

Haas vs. Henkel arose under habeas corpus proceedings. Haas and others, one being a clerk in the Bureau of Statistics of the Department of Agriculture of the United States, were indicted in the District Court for the District of Columbia for conspiracy to defraud the United States, and also for conspiracy to commit an offense against the United States. Removal proceedings were instituted in the District Court for the District of New York. The defendants petitioned for a writ of habeas corpus on the ground that the indictments did not set forth any offense against the laws of the United States. The District Court refused the writ, and the case was taken to the Supreme Court on appeal from such order.

The count for conspiracy to defraud the United States charged a conspiracy on the part of the defendants, one of them, Holmes, being in the service of the United States, to obtain advance information of the condition of the cotton crop in the United States from the Bureau of Statistics, and to obtain from Holmes false and fraudulent reports in regard to the cotton crop, these reports to be used by the conspirators for the purposes of speculation.

The court held:

(1.) That although the count did not allege a direct pecuniary loss to the government, yet the result of the operations would be a "real financial loss."

(2.) That Section 37 is broad enough to include a conspiracy to impair or defeat any lawful function of any

department of the government, and that any conspiracy which was calculated to impair the efficiency of the operations of the department of agriculture would be a conspiracy to defraud the United States under this rule.

The indictment in *Curley vs. U. S.* was in three counts. The second and third counts set forth a conspiracy to commit an offense against the United States, and set forth the specific statutes which were to be violated.

The first count alone charged a conspiracy to defraud the United States under Sec. 5440, (Now Sec. 37 of the Penal Code of the United States.)

The means by which the fraud was to be accomplished and the object of the conspiracy were set forth in detail in the indictment.

It was alleged that one of the defendants was desirous of obtaining an appointment as a letter carrier in the postal service of the United States, and that he and Curley entered into a conspiracy whereby Curley was to personate the person desiring the appointment at a civil service examination, was to answer the questions propounded at the examination, and was to sign the examination papers in the name of such other person, thereby signing and presenting to the civil service examiners fraudulent papers.

The point was taken on demurrer and after conviction, that the indictment did not set forth an offense against the United States for the reason, among others, that the government was not defrauded of any property rights, or of anything of any pecuniary value.

The court held that a pecuniary loss would result from the conspiracy, and further stated that Sec. 5440, was

broad enough to include a conspiracy to cheat and deceive the agents of the United States Government in respect to a service which it was the duty of the Government to perform, and that the regulations providing for admission to the civil service of the United States, which it was the object of the conspiracy to circumvent, were founded upon a law of Congress.

The court stated in broad language that any conspiracy to impair or obstruct the administration by the Government of any of its laws, was covered under Section 5440 (now Section 37).

The case of the *United States vs. Aczel* arose first on demurrer to an indictment found in the District Court of Indiana and came up in the Circuit Court of Appeals for the 7th Circuit, after conviction.

Under this indictment a large number of persons were charged with a violation of Secs. 19, 37 and 215 of the Penal Code of the United States.

The District Court construed Sec. 19 as covering the case of a conspiracy to threaten or intimidate any person in exercising his right to vote for a Representative in Congress, and the greater part of the opinion was devoted to a consideration of this aspect of the case.

The second count of the indictment was based on Section 37 of the Penal code of the United States.

The count set forth that the defendants conspired to commit a wilful fraud upon Art. I, Sec. 2 of the Constitution of the United States, and to commit a wilful fraud on the law of the United States, to wit; Upon an act of Congress

providing for the method of conducting the nomination and election of United States senators, and set forth in detail of what the alleged frauds consisted. It appeared that the conspiracy contemplated causing and procuring a very large number of persons who did not have the qualifications requisite for electors as provided in Art. I, Sec. 2 of the Constitution of the United States, to vote at a Congressional election.

In effect, the indictment charged that the conspiracy was to defraud the United States of a lawful election by causing persons to vote who did not possess the qualifications of electors as provided in Art. I, Sec. 2 of the Constitution of the United States and the laws of the United States respecting the qualification of electors of a senator of the United States, and by causing persons to vote on the names of other persons who were qualified electors.

It is to be observed that the second count of the indictment in the Aczel case did not anywhere allege that the election was to be debauched or corrupted by the bribery of electors, as set forth in the indictment in the present case, or by any other means than by causing persons to vote who were not qualified electors.

This being the charge of the indictment, the language of the District Court, in overruling the demurrer, must be taken to refer to the alleged means, set forth in the body of the count, whereby the rights of the United States were to be violated by acts in violation of Art. I, Section 2 of the Constitution of the United States, and therefore the statement of the court, that a conspiracy to corrupt and debauch voters at an election, where a member of Congress is to be elected is a crime cognizable in the Federal Courts, must

be taken as holding only that a conspiracy to vote and cause to be voted at a Congressional and Senatorial election, persons not qualified to vote under Art. I, Sec. 2 of the constitution of United States is an indictable offense under Sec. 37.

The opinion of the District Court on demurrer nowhere holds that the bribery of a qualified elector to vote for a candidate for Representative in Congress is a crime of which the United States courts have now jurisdiction, or that the United States, under the law as it now stands, has any legal right, privilege or function in respect to a "fair and clean election of a Congressman," which is violated by the bribery of electors.

We have heretofore adverted to the point that the indictment in the case at bar nowhere sets out intimidation or obstruction of any person in his right to vote, nor is there any pretense that the indictment states any conspiracy to cause unqualified persons to vote at the election on November 3, 1914, for a candidate for Representative in Congress. In fact, the indictment expressly states in several counts that the voters who were to be corrupted and debauched were qualified electors.

It is very significant that this decision in the District Court on the point in question, namely; the jurisdiction of the Federal Courts over a charge of conspiracy, under Sec. 37, to corrupt and debauch an election of a Congressman by causing unqualified persons to vote, was not supported by the Circuit Court of Appeals of the Seventh Circuit to which court the defendants prosecuted a writ of error after conviction; *Aczel vs. U. S.*, 232 Fed. 682.

The only point raised on the writ of error in the Circuit Court of Appeals was to the sufficiency of the indictment.

The court held the first count sufficient, which charged a conspiracy under Sec. 19, to oppress and intimidate citizens of the United States in the exercise of their right to vote, and refused to consider the sufficiency of the other counts including the second, which was based on Sec. 37, saying:

“Under these circumstances, the first count being sufficient to sustain the judgment of the District Court, the other counts need not be considered.”

The cases of *Haas vs. Henkel* and *Curley vs. the United States* may be taken to establish the doctrine that Section 37 of the Penal Code embraces not only conspiracies to defraud the United States of property, but also includes conspiracies to assail or impair the administration of a law of the United States, or to deceive any agent of the United States in the exercise of an administrative duty or function conferred upon him by law.

The claim may be advanced by the Government that as Representatives in Congress are officers of the United States under the authority of *Lamar vs. United States*, 241 U. S. 102, and as Sec. 37 has been construed to cover a conspiracy to deceive an officer of the United States that therefore a conspiracy to elect a person a Representative in Congress by bribery is a conspiracy to deceive officers of the United States, and hence the indictment falls within the scope of Sec. 37.

The case of *Lamar vs. United States* was not decided under Sec. 37, but under Sec. 32 of the Penal Code which makes it an offense to falsely personate an officer of the United States and under the broad language of the statute, it was held that a Representative in Congress was an officer of the United States within the meaning of the statute.

The court did not rule that a Representative in Congress was an officer of the United States in the meaning given that term in the *Haas vs. Henkel*, and *Curley* cases, construing Sec. 37, nor did the court overrule its decision in *Burton vs. United States*, 202 U. S. 344, wherein it was held that in a constitutional sense, a Senator was not an officer holding this place "under the Government of the United States."

Whether a Representative in Congress is an officer of the United States as that term is used in various statutes of the United States, it is not necessary in the present aspect of this case to determine.

The precise question here is this: Does Sec. 37 as construed cover a case where the House of Representatives was to be deceived by a conspiracy?

No case can be found under Sec. 37, which supports such an extreme construction.

All the cases involved were cases where the administrative functions of the United States were involved, or where persons who were agents of the United States in executing a law of the United States were to be deceived.

The essential difference between a conspiracy to impair the administration of a law of the United States, or which was to deceive an agent of the United States charged with the administration of a law of the United States, and one which goes to the action of electors in choosing a member of the legislative branch of the government is so clear that the doctrine of *Haas vs. Henkel*, and *Curley vs. United States* cannot correctly be said to apply to the indictment in question.

Under the construction contended for by the government, the statute must include not only conspiracies to defraud the United States by the corruption of electors of either branch of the national legislature, but would also include conspiracies to affect by any fraud whatsoever the election of Presidential electors or their action after appointment in respect to the electors of a President.

That Congress could not have intended when it passed Sec. 37 in its present form to include such a class of conspiracies has already been argued under point III of the brief, Page 42 herein, and the argument need not here be repeated.

Another aspect of the extreme construction urged by the Government should be noticed.

The basis of the claim of the Government is that the House of Representatives is a body composed of officers of the United States, and that as officers of the United States were to be deceived by the election of a member by bribery of electors, the doctrine of *Haas vs. Henkel* and the *Curley Case* applies.

The gist of the offense in this view is the deception to be practised on the House of Representatives. It therefore follows that the statute under this theory embraces not only conspiracies to deceive by means of bribery of electors, but extends to all conspiracies to influence the House or Senate in their action by deception or other means amounting to fraud.

That the construction contended for carries with it necessarily such a result is sufficient to refute the correctness of such a construction without further argument.

At this point, and as involved in the claim that Sec. 37 embraces a conspiracy to deceive the House of Representatives, may be noticed the point taken on the brief of the Government, (Brief of the United States, pages 30 and 31) that there was a plan to defraud the United States of its money: That is, the annual salary of seventy-five hundred dollars paid to a Congressman. This is only an incidental result of the conspiracy as is shown by the wording of the third count on which the Government relies; (record page 19) the main contention of the Government being that the conspiracy was intended to deprive the United States of the right to a fair and free election.

Moreover, in order to sustain this contention Sec. 37 must be construed to cover the case of deception practiced on the House of Representatives, a point discussed above.

The reasoning of the lower Court in disposing of this point seems conclusive:

"The United States cannot be defrauded by the payment of a salary to one whose right to a seat is formally established by the House." (Opinion, record page 45)

Further, differentiating *Haas vs. Henkel* and *Curley vs. United States* from the case at bar, it appears that in each of the cases cited, the court was able to lay hold of some specific statute of the United States on which was founded the right or function of the United States in the exercise of which it was to be defrauded.

No case has been discovered which holds that an indictment can be sustained under Sec. 37, charging a conspiracy to defraud the United States in respect to a right or function

where such right or function was not founded directly on some statute of the United States creating or defining such right, or function.

In the case at bar, no such statute can be pointed out and for this reason, the doctrine of the *Haas vs. Henkel* and *Curley vs. United States* cases are not applicable.

Further than this, in each case except the Aczel case, some administrative function of the government was to be assailed or impaired by the conspiracy.

None can be pointed out in the case at bar.

Furthermore, the cases, except the Aczel case, involved a false and fraudulent representation either to or by some agent of the United States executing a law of the United States, or the effect of the conspiracy was to deceive an agent of the United States charged with the administration of a law of the United States.

No such act is charged in the case at bar in the allegations of the indictment under consideration.

The decision in the Aczel case on the demurrer to the indictment in the District Court is not in point, even if its correctness be assumed, which assumption is open to grave doubt as far as the count for conspiracy under Sec. 37 is involved.

This court is now asked to broaden the scope of Sec. 37 far beyond the construction given the statute in *Haas vs. Henkel* and *Curley vs. United States*, and to decide that it covers the case where no administrative function of the United States is assailed, but where it is alleged there was a fraud in the creation of one of the great departments of

the government, namely, the creation of the House of Representative, and further, to decide that it covers a case where the supposed rights or functions of the United States alleged to be assailed or impaired were not created, established or defined by any Federal statute, but in so far as statutory regulation is concerned or relied on, were solely matters of State regulation under State statutes.

Not only would such an extension of the statute be unwarranted by the ordinary rules of construction, but the consequences of such a construction would be mischievous in the extreme, as has been pointed out *supra*.

The Federal Courts would be either in the position of enforcing the vast variety of State statutes, which have never even been adopted or even considered by Congress relating to elections, or else would be obliged to legislate in each case and decide what the Federal right was, and define the content thereof and its scope, in the absence of Federal enactment defining and delimiting the interest of the United States.

In view of the foregoing considerations, it is submitted that the indictment is not supported by any authority in point, and is not within the doctrines laid down in *Haas vs. Henkel* and *Curley vs. United States*.

VI.

CONCLUSION.

It is submitted in conclusion that:

1. Sec. 37 of the Criminal Code of the United States does not and was not intended to cover the case of a conspiracy to bribe electors at a Congressional election or to corrupt such election by the use of intoxicating liquor.

2. That bribery or conspiracy to bribe an elector to vote for a Representative in Congress are not offenses against the United States, but that on the contrary Congress has divested the United States courts of the jurisdiction which they once had on the subject and has relegated the definition and the punishment of such crimes against the elective franchise to the several States which now severally have exclusive jurisdiction over bribery and conspiracy to bribe at a Congressional election.

3. That this prosecution is an attempt indirectly, by a forced construction of Sec. 37 of the Criminal Code, to obtain a jurisdiction in the courts of the United States to punish alleged offenses against the elective franchise, of jurisdiction over which Congress has divested the Federal courts, with the intent that the States should resume their functions as the primary guardians of the purity of Congressional elections under Art. I, Sec. 4 of the Constitution of the United States.

4. That Congress has not by statute vested the United States Courts or any Federal officer with any present right of control, regulation, or protection, administrative, executive or penal, over Congressional elections, and that, therefore the United States has not been deprived of the exercise of any legal right in the premises which it was entitled to enforce or protect in its courts, and hence the United States has not been defrauded, under Sec. 37 of the Penal Code.

5. That the United States has no jurisdiction to punish the alleged conspiracy in fraud upon, or violation of, laws of the State of Rhode Island, on the facts appearing in the indictment, since the subject-matter of the indictment is a

matter which the state may exclusively regulate under Art. I, Sec. 4 of the Constitution of the United States in the absence of Congressional action.

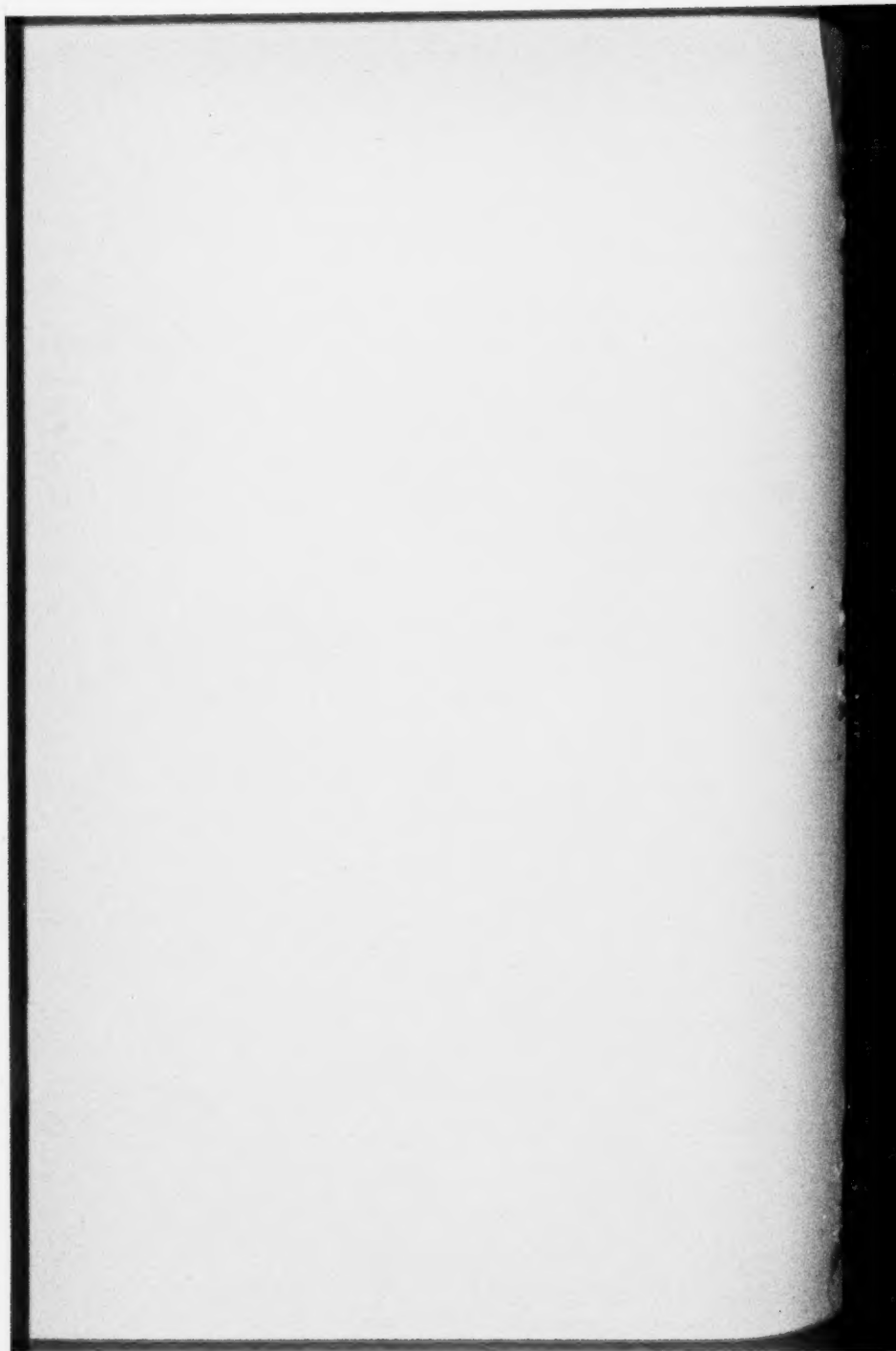
6. That the indictment is not sustained by the authority of any adjudicated cases in the courts of the United States.

THEREFORE, THE JUDGMENT OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND SUSTAINING THE DEMURRERS IN THIS CASE ON THE GROUND THAT SEC. 37 OF THE PENAL CODE DOES NOT EMBRACE THE CONSPIRACY ALLEGED IN THE INDICTMENT SHOULD BE AFFIRMED.

Respectfully submitted,

ALEXANDER L. CHURCHILL,

Attorney for Defendants in Error.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1916.

No. 684.

THE UNITED STATES, PLAINTIFF IN ERROR

VS.

CHARLES HAMBLY, ET ALI.

BRIEF FOR GEORGE D. FLYNN, ONE OF THE
DEFENDANTS.

STATEMENT.

The defendant, George D. Flynn, was indicted with eighteen other persons under Section 37 of the Penal Code for conspiracy to defraud the United States by corrupting an election held in Rhode Island for a representative in congress. The indictment contains eleven counts, and alleges that the purpose of the conspiracy was to be effected by bribery of the electors qualified to vote for a representative in congress. The defendant demurred to the indictment and the demurrer was sustained.

CONSTITUTION AND STATUTES.

Such parts of the Constitution of the United States and the sections of the Penal Code of the United States as apply to this case are as follows:

CONSTITUTION.

Article 1. Section 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Article 1. Section 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at

any time by law make or alter such regulations, except as to the places of choosing senators.

Article 1. Section 5. Each house shall be the judge of the elections, returns and qualifications of its own members.

STATUTES (PENAL CODE).

Section 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, * * * they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

Section 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

THE SCOPE OF SECTION 37.

The United States claim that Section 37 covers the violation of any right of the United States by artifice or deceit; that the United States have a right to have congressional elections conducted free from bribery; and that a conspiracy to bribe voters at such an election is a conspiracy to defraud the United States.

Construing Section 37, formerly Section 5440, this court has said:

"It has been held that in an indictment under § 5440, Rev. Stat., for a conspiracy to defraud the United States, it is not essential that the conspiracy shall contemplate a financial loss, or that one shall result; and that the statute is broad enough to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of the government." *United States v. Barnow*, 239 U. S. 74 at 79. *Haas v. Henkel*, 216 U. S. 462 at 479.

If the scope and purpose of Section 37 is fully defined in *Haas v. Henkel*, and *United States v. Barnow*, then it does not include a conspiracy to corrupt a congressional election. In one case only, and that in the District Court, has it been held that the conspiracies punishable under Section 37 included a conspiracy to

corrupt such an election. *United States v. Aczel*, 219 Fed. 917, 934, 938. In the Circuit Court of Appeals this construction was not considered and the judgment of the District Court was affirmed under Section 19. *Aczel v. United States*, 146 C. C. A. 578.

The defendant contends that Section 37 does not apply to a conspiracy to bribe voters at a congressional election because:

I. Congress has repealed all the laws of the United States which expressly punished bribery and conspiracy to bribe at an election, and has left the supervision and control of elections to the several states, excepting as it retained jurisdiction under Section 19.

II. An examination of Sections 19 and 37 will show that congress did not intend the second clause of Section 37 to apply to conspiracies to bribe voters and that they relate to conspiracies differing in kind.

III. While congress has the power to secure free and fair elections, the right to such an election springs from the exercise of this power by legislation and until the power is exercised there is no right.

IV. The importance of Federal Elections as shown by the constitutional provisions specifically relating to elections renders it improbable that Section 37, which in general terms makes it a crime to conspire to defraud the United States without referring specifically to elections, was intended to relate to elections.

V. The several counts in the indictment relating to the intention of the defendants to procure the salary of a representative for Burchard do not charge an offense.

ARGUMENT.

I.

Congress has Repealed all the Laws of the United States Which Expressly Punished Bribery and Conspiracy to Bribe at an Election, and has left the Supervision and Control of Elections to the Several States, Excepting as it Retained Jurisdiction Under Section 19.

Congress by an act commonly known as the Enforcement Act approved May 31, 1870, 16 Stat. at L. 140 and by a supplementary act approved February 28, 1871, 16 Stat. at L. 453, provided for the superintendence, regulation and control of elections for representatives in congress. The scheme of this legislation was

so comprehensive that it may fairly be said to have been intended to cover the whole subject of congressional elections, the protection of the elective franchise, and the punishment for crimes against the elective franchise. These laws provided civil remedies for persons who were injured in their right to vote at such elections, as well as punishment for offenses against the elective franchise which were dealt with as crimes. They made it a crime to violate state laws relating to elections and in effect adopted the state laws. *Ex parte Siebold*, 100 U. S. 371 at 389. An examination of these statutes will show that the government of the United States took over the entire supervision, superintendence and control of federal elections. They provided for the appointment of marshals and supervisors with extraordinary powers, sufficient, if exercised, to enable the government to scrutinize the voting, and to prevent wrong being done by bribery, force or fraud, either to the United States in the conduct of federal elections, or to persons lawfully taking part in such elections. Bribery as well as force or intimidation at such an election was punished as a crime, Sections 5507, 5511 and 5512. Conspiracies to prevent citizens by any unlawful means (which included bribery) from voting and to intimidate and to injure citizens in the exercise of their civil rights were also punished as crimes. *Revised Statutes*, Sections 5506 and 5508. Speaking of these laws the court said: "They relate to elections of members of the house of representatives, and were an assertion, on the part of congress, of a power to pass laws for regulating and superintending said elections, and for securing the purity thereof, and the rights of citizens to vote thereat peaceably and without molestation." *Ex parte Siebold*, 100 U. S. 371 at 389. All the provisions of law which congress had adopted expressly relating to the superintendence and control of elections of representatives in congress, and to secure the purity thereof, were to be found in the Enforcement Act of May 31, 1870, and the supplementary act of February 28, 1871. The legislation for the regulation and control of elections was thorough and complete. In the revision of the Statutes in 1878 the Enforcement Act and the supplementary act were specifically classified under titles showing that congress intended that the laws relating to offenses against the elective franchise should be included in these acts. *Revised Statutes*, page 352, Title XXVI, The Elective Franchise, Sections 2002 to and including 2031, and *Revised Statutes*, page 1067, Title, Crimes Against the Elective Franchise and Civil Rights of Citizens, Sections 5506 to and including 5532.

Previous to 1870 congress had not enacted any statutes taking

over the control of federal elections. Speaking on this subject the court said in 1880:

"Congress has partially regulated the subject heretofore. In 1842 it passed a law for the election of representatives by separate districts; and, subsequently, other laws fixing the time of election, and directing that the election shall be by ballot." *Ex parte Siebold*, 100 U. S. page 371 at 391. It should be noticed here that the court in referring to the acts of congress that partially regulated federal elections does not refer to *Revised Statutes*, Section 5440, now Section 37 of the *Penal Laws of the United States*, under which this indictment is drawn, and Section 5440 had then been in force more than thirteen years. It is quite improbable that the court believed when *Ex parte Siebold* was decided that Section 5440 applied to congressional elections.

The circumstances under which the Enforcement Act and the supplementary act were passed, the obvious purpose of these acts, the specific and comprehensive provisions they contained for the supervision, regulation and superintendence of congressional elections, leave no doubt but that congress intended to cover the whole subject of offenses against the elective franchise solely by these acts and that the second clause of Section 37 does not apply to such offenses.

It must be admitted that if Section 37 related to elections the failure to group it with the sections providing for the *punishment of crimes against the elective franchise and the civil rights of citizens* in 1878 when the statutes were revised and when the subject of federal elections was being carefully considered and the laws relating thereto were being carefully scrutinized was a singular omission.

The policy of the United States of supervising and regulating the conduct of elections begun in 1870 had been abandoned at the time of the commission of the acts set forth in this indictment, and the manner of holding elections for representatives in congress was left to the laws of the several states. The Enforcement Act and the supplementary act had been repealed, and congress had not enacted any other legislation to take their place. The whole subject had been left where it was prior to 1870. There is no federal statute which provides for the enforcement or punishes a violation of the state elections laws. If the state laws are to become a part of the laws of the United States they must be adopted by some act of congress. The United States do not adopt state laws prescribing the time, place and manner of holding elections unless congress by some legislative act does so, but such state laws are operative and become binding upon the United

States by force of Section 4 of Article 1 of the Constitution of the United States. The United States are bound by these laws until congress alters them or makes new laws, and the laws of the State of Rhode Island relating to the manner of holding elections for representatives in congress are effective for that purpose without congressional sanction or approval.

The commission to revise the criminal laws in their report in 1901 said:

"While the commission is of the opinion that the enactment of adequate legislation for the punishment of fraud, bribery, etc., at elections for representatives in congress would be highly proper, especially as some of the states have no laws for the punishment of such offenses, it did not feel justified in reporting the same in view of the fact that provisions of that character previously adopted were repealed in 1894, and that no subsequent effort has been made by congress for their reenactment." Senate, Doc. No. 68, Part 2, p. IX, 57th Congress, 1st session.

In many of the states the laws relating to elections are severe and not only provide for the most careful and thorough scrutiny and superintendence of the elections, but also punish many acts designated as corrupt practices which were not punishable at common law or under the statutes of the United States. The United States by their present policy have the benefit of a complete and comprehensive system of state election laws. They rely upon the several states to secure peaceful, orderly and honest elections, and having repealed the federal laws which were in force for nearly twenty-five years and which punished bribery and conspiracy to bribe at an election, it is clear that they no longer intended to retain jurisdiction over these offenses. Certainly, there is nothing in Section 37 that gives any indication of an intention to regulate the manner of holding elections.

II.

An Examination of Sections 19 and 37 will show that Congress did not Intend the Second Clause of Section 37 to Apply to Conspiracies to Bribe Voters, and that they Relate to Conspiracies Differing in Kind.

The government claims that the United States have the right to a fair and clean election; that this right includes the right to have the votes cast for representatives in congress honestly cast and counted; that any interference with this right by deception or artifice, which the government claims includes bribery, is a fraud upon the United States; and that a conspiracy to corrupt such an

election is punishable as a crime under Section 37. If the government's contention be sound, then this conspiracy may be punished under either Section 19 or Section 37, for it was held in *United States v. Moseley*, 238 U. S. 333 that a conspiracy of state election officers to omit the returns from certain precincts at an election for members of congress from their count and from their return to the state election board is indictable under Section 19. The conspiracy in the Moseley case was clearly a conspiracy to corrupt an election, although the pleader alleged that it was directed against the right of the citizen to vote and have his vote counted.

The offense under Section 19 is committed when the conspiracy is formed, while under Section 37 the offense is not complete until one or more of the conspirators do some act to effect the object of the conspiracy. Overt acts are necessary only in those conspiracies where the statutes of the United States expressly make them necessary. "The offense is complete when the unlawful confederacy, combination or agreement is made, and a criminal act, done in pursuance of the conspiracy, is not necessary to justify a conviction for the crime of conspiracy itself, but is merely an aggravation of it." *United States v. Lancaster*, 44 Fed. Rep. 896 at 898. A conspiracy to injure a citizen in the free exercise of his constitutional right to vote, and to have his vote counted, for a representative in congress is a crime. The same conspiracy would be a conspiracy to defraud the United States (by depriving them as the government contends of a free and fair election), and although it is necessarily directed against the United States, the sovereign, it is not a crime until some overt act to effect the object of the conspiracy is committed, if it comes under Section 37. The difference in the punishment under Section 19 and Section 37 is noticeable. Under Section 19 the conspirator may be fined not more than five thousand dollars and imprisoned not more than ten years and shall moreover be thereafter ineligible to any office or place of honor, profit or trust created by the Constitution or laws of the United States, while under Section 37, which requires an overt act to make the conspiracy criminal, the conspirator shall be fined not more than ten thousand dollars and imprisoned not more than two years or both. The fact that the defendants in the Moseley case according to the contention of the government might have been convicted under either Section 37 or Section 19 with the great difference in punishment under the two sections shows that the contention is unsound. Did congress intend that these two sections should cover the same conspiracy and make the punishment less where the conspiracy is directed against the sovereign, and is aggravated by the commission of an overt act, than where it is

directed against the citizen and no overt act is committed?

It is significant that under Section 19 the wrongdoer is rendered ineligible to any office or place of honor, profit or trust created by the Constitution or laws of the United States, and this is the usual punishment provided for the offense of corrupting an election, or judicial or legislative action, while a conspiracy to defraud the United States (which the government claims would include a conspiracy to corrupt an election for representatives in congress) is punishable in the same manner as an offense to defraud the United States of a duty or special tax. Clearly the conspiracy to corrupt an election for representatives in congress which thus attacks the source of governmental authority is an offense differing in kind from a conspiracy to cheat or defraud the United States out of some part of its revenue; and the difference between the punishment imposed under Section 19 and that imposed under Section 37 shows that these two sections were not intended to cover the same kind of conspiracy, and is in the nature of a congressional interpretation of the scope and purpose of these sections.

The contention of the United States that congress meant to punish the intent to injure more severely than the attempt is unsound.

III.

While Congress has the Power to Secure Free and Fair Elections, the Right to Such an Election Springs from the Exercise of this Power by Legislation and until the Power is Exercised there is no Right.

No question is made of the power of the United States to secure honest elections, but this power is to be exercised by legislation. Speaking on this subject the court said:

"That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the Legislature is elected by the people directly, *has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration.*" * * * "Can it be doubted that congress can by law protect the act of voting, the place where it is done and the man who votes, from personal violence or intimidation and the election itself from corruption or fraud?" *Ex parte Yarbrough* 110 U. S. 651.

The United States have the power to protect their judicial officers, but to do so, congress must act. "The legislative branch of the government can only protect the judicial officers by the enactment of laws for that purpose." *Cunningham v. Neagle*, 135 U. S. 1.

In *Prigg v. Pennsylvania*, 16 Pet. 539, 617, Mr. Justice Story said: "If congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, * * * in such a case, the legislation of congress, in what it does prescribe, manifestly indicates, that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do, is as expressive of what its intention is as the direct provisions made by it."

In the dissenting opinion Mr. Justice Field in *Ex parte Siebold* 100 U. S. 371 said: "The general authority of congress to pass all laws necessary to carry into execution its granted powers, supposes some attempt to exercise those powers. There must, therefore, be some regulations made by congress, either by altering those prescribed by the State or by adopting entirely new ones, as to the times, places and manner of holding elections for Representatives, before any incidental powers can be invoked to compel obedience to them. In other words, the implied power cannot be invoked until some exercise of the express power is attempted, and then only to aid its execution."

This statement of the law was not controverted in the opinion of the court, and the decision of that case proceeded upon the ground that congress had acted and had in effect adopted the state laws. If congress does not act, and in the instant case, congress has not acted, the control of the election is left with the states.

The constitutional provisions for these elections are found in Article I. Sections 2 and 4.

The United States have the *right* to such elections as congress provides for. They have the *right* to have the elections free from these acts which congress forbids and punishes, but they have no *right* to be free from acts which congress has not forbidden. The United States have not the *right* to punish bribery at federal elections because there is no act of congress punishing bribery at an election. In the absence of congressional legislation elections will be conducted wholly under state laws. The enforcement of state regulations relating to elections is left to the state. Such state regulations may or may not secure honest elections. They may punish bribery or conspiracy to bribe at an election or they

may permit either or both to go unpunished. In the absence of congressional legislation the United States are only entitled to such an election as is secured and protected by state laws.

While it is true that congress does not create rights for the United States it is a necessary agency that must be used to declare the rights of the United States and until such rights are declared they are not legal rights and are not enforceable.

IV.

The Importance of Federal Elections as shown by the Constitutional Provisions Specifically relating to the Elections Renders it improbable that Section 37, which in General Terms Makes it a Crime to Conspire to Defraud the United States without Referring Specifically to Elections, was intended to Relate to Elections.

The subject of elections of representatives in congress is dealt with in three sections of the Constitution of the United States, Article I, Sections 2, 4 and 5. In Section 4, congress is expressly given authority to make or alter regulations prescribing the time, place and manner of holding elections. In Section 5 each house of congress is expressly made the judge of the elections, returns and qualifications of its own members. The importance of congressional elections is shown by these constitutional provisions, which provide for the membership of the house of representatives; for the time, place and manner of holding elections of the members; and for the tribunal which shall decide the questions relating to the elections, returns and qualifications of members of the house of representatives. Each step in the constitution of the house of representatives is specifically provided for. Under Section 2 congress undoubtedly has all the power necessary to provide for the election of the members of the house of representatives. If the United States intend to exercise their implied power under Section 2 to secure the election of the members of the house of representatives, is it at all probable that they will do so by congressional legislation that makes no reference to elections? Undoubtedly the United States have a right to have representatives in congress, duly elected, but they do not punish those persons who publicly denounce the government of the United States, and who would abolish the congress, and who openly recommend a combination of citizens to overthrow our form of government, because congress has not enacted laws for their punishment. Would it be claimed that such a combination to prevent the election of a representa-

tive in congress by refusing to vote at an election is punishable under Section 37?

Congress has the power to make or alter state laws regulating the time, place and manner of holding congressional elections. Of course, it is possible that this power could be exercised by congress, and a state law altered without expressly referring to the subject of elections, but it is reasonable to believe that, if congress intended to alter a state law and exercise and impose its own authority over elections in place of the state's authority, some specific reference would be made to elections, and that the purpose of congress to intervene would be plainly indicated.

The Constitution makes the question of the election of representatives in congress a political question, and makes the house of representatives the judge of such an election. In this political field the house of representatives exercises a judicial function. It is called upon to administer election laws, just as it is called upon to administer the rules of the house. All other laws are administered and enforced by the judicial and executive departments of our government. The house of representatives in the performance of its duties must rely upon its own knowledge and judgment, and it may be fairly assumed that such election laws like the house rules would plainly show their purpose.

As was said by the justice who decided this case in the District Court:

"It is impossible to believe that in extending the conspiracy statute to embrace frauds other than those upon the revenue it ever occurred to any members of congress that they were legislating upon the subject of congressional or presidential elections, or that questions of public policy as to the relations between State and Nation were involved. This subject is so important, and of such special character, that it would have been dealt with specifically and not in an omnibus clause, had it been intended to deal with it at all."

V.

The Several Counts in the Indictment Relating to the Intention of the Defendant to Procure the Salary of a Representative for Burchard do not Charge an Offense.

The United States claim that the third count of the indictment charges a conspiracy to procure for one Burchard, a candidate for representative in congress, the annual statutory salary of seventy-five hundred dollars, by bribing persons to vote for him. The defendant does not admit that this count charges such a conspiracy and says that the unlawful intention of securing the statutory salary for Burchard is not alleged to be the object of the conspiracy. But if it should be held that the indictment does charge a conspiracy to procure for Burchard the annual statutory salary such a conspiracy is not an offense against the United States. The salary of a representative is paid to those persons only who are adjudged members of the house of representatives, and unless the judgment of the house of representatives is corrupted, the United States is not defrauded in paying the salary to a representative. As was said in the opinion of the District Court of the United States in this case "The United States cannot be defrauded by the payment of a salary of one whose right to a seat is formally established by the house" (Record p. 100). The indictment does not charge that the United States were to be defrauded by corrupting the house of representatives, and if that body is left free to decide the question of the election of Burchard the United States acting upon that decision cannot be defrauded. It may be an incident of a fraudulent congressional election that the United States may pay the salary to a person so elected, but they are not defrauded when in making this payment they honor the judgment of the house of representatives.

VI.

CONCLUSION.

The Brief (p. 5) for the government assumes that it "cannot be denied that bribery is an artifice or deceit" and therefore is covered by the words "to defraud". Bribery undoubtedly is a kind of corruption, but it is not fraud any more than it is intimidation. It is a kind of theft or extortion, "a princely kind of thieving". Of course, bribery may be used to accomplish fraud; as for example, in an election a precinct officer may be bribed to make a

false return, but there the offense of bribery is a means to accomplish the offense of making the false return and creating the fraud. When a voter is bribed there is no fraud and the only offense committed is the offense of bribery. In the ordinary use of the term "fraud in elections" bribery and intimidation are not included. This usage is followed on the Brief (p. 12) for the government where it is said "Why should the right recognized in *Moseley's Case* not be extended to the much more serious and subtle offenses of bribery and fraud?"

The penal code in several sections makes it a crime to bribe a judge, a judicial officer of the United States, a witness, members of congress and other officers. A conspiracy to bribe any of the persons named is a conspiracy to commit an offense and, therefore, is punishable under the first clause of Section 37 as a conspiracy to commit an offense against the United States, but it seems absurd to urge that the conspiracy to bribe any of those persons could also be punished as a conspiracy to defraud the United States. During the years when the federal statutes made bribery of voters an offense, was a conspiracy to bribe voters indictable both as a conspiracy to commit an offense against the United States and also as a conspiracy to defraud the United States? Stealing the property of the United States is an offense under Section 47 of the Penal Code, and a conspiracy to steal is, therefore, a crime under the first clause of Section 37 punishing a conspiracy to commit an offense, but would any pleader contend that a conspiracy to steal the property of the United States could be proved under an indictment alleging a conspiracy to defraud the United States? Larceny is a recognized term just as bribery, and neither of them is covered by the expression "to defraud".

The government's contention is that the United States have a right to a "free and fair" election, and that a conspiracy to bribe voters is a conspiracy to defraud the United States of that right. As the Judge of the District Court pointed out in his opinion the indictment does not charge a conspiracy to defraud the United States of this right; and as whatever right or power the United States have comes from the Constitution the bribery of voters could not be a means of depriving or defrauding the United States of any such right or power. If it then be said that the conspiracy is one to deprive the United States of the enjoyment of their right to a "free and fair" election the answer is that the enjoyment is too vague, indefinite and ephemeral to be the subject of the alleged fraud.

The contention for the government disregards the fact that the United States have entrusted to another sovereignty, each separate state, the control over congressional elections. The

wrong done by committing bribery at those elections is a wrong to that separate sovereignty of the state. The United States could well have made it a wrong to the sovereignty of the United States also, but instead of doing this, congress by the repeal of the Enforcement Act made clear that the present policy of the federal government is that in matters not relating to the rights of citizens and not covered by Section 19, the separate sovereignty of the state is to be held morally responsible and not the individual voter criminally responsible to the United States for the conduct of the congressional elections.

JOHN W. CUMMINGS,
JAMES T. CUMMINGS,
JOHN J. FITZGERALD,
Attorneys for Defendant.



ANSCRIPT

OF

CORD

THE UNITED STATES, PLAINTIFF IN ERROR, vs.
EDWARD O'TOOLE, GUY C. MACE, JOHN M. TULLY,
ET AL.

INDEX.

	Original.	Print.
Caption.....	1	1
Order filing indictment.....	1	1
Indictment.....	2	1
Order remitting case to Huntington for trial.....	8	5
Order docketing case at Huntington.....	9	5
Judgment.....	9	6
Demurrer.....	11	7
Opinion of the court.....	13	8
Order allowing writ of error.....	19	11
Petition for writ of error.....	20	12
Assignment of errors.....	21	12
Writ of error (copy).....	22	13
Certificate of service of writ of error.....	23	14
Citation (copy).....	23	14
Acceptance of service of citation.....	24	14
Clerk's certificate.....	25	15
Writ of error.....	26	15
Citation and service.....	27	16



1

TRANSCRIPT OF THE RECORD.

In the District Court of the United States for the Southern District of West Virginia, at Huntington.

THE UNITED STATES OF AMERICA <i>vs.</i> EDWARD O'TOOLE AND OTHERS.	}	No. 168. Upon an ind. for vio. sec. 37, C. C.
--	---	--

D. E. French, Esquire, Special Assistant to the Attorney General of the United States, and William G. Barnhart, Esquire, United States District Attorney for the Southern District of West Virginia, for the United States of America and plaintiff in error; John H. Holt, Esquire, of Holt, Duncan & Holt, William Gordon Mathews, Esquire, of McClintic, Mathews & Campbell, and Malcolm Jackson, Esquire, of Brown, Jackson & Knight, for defendants and defendants in error.

Be it remembered, that, heretofore, to wit, at a District Court of the United States for the Southern District of West Virginia, continued and held at Webster Springs, in said district, on Friday, the 25th day of August, A. D. 1916, the following order was made and entered of record.

ORDER.

THE UNITED STATES OF AMERICA <i>vs.</i> EDWARD O'TOOLE AND OTHERS.	}	No. 168. Upon an ind. for vio. sec. 37, C. C.
--	---	--

2 The grand jury appeared in court pursuant to retirement and presented an indictment against said defendants, endorsed "A true bill," which indictment is ordered to be filed.

The indictment referred to in the foregoing order is in the words and figures as follows:

INDICTMENT.

In the District Court of the United States of America for the Southern District of West Virginia.

Of the August term, in the year 1916.

Southern District of West Virginia, ss: The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Southern District of West Virginia, at the August term thereof in the year 1916, held at Webster Springs, and inquiring for that district, upon their oath present, that, on the 6th day of June, 1916, a direct general primary election, under the laws of the State of West Virginia, for the nomination of candidates of political parties to be voted for at the general election to be held

in said State on the 7th day of November, 1916, was held throughout the State of West Virginia, at which said primary election candidates, for nominations for the office, among others, of Senator in the Congress of the United States, from said State of West Virginia, of the Republican and Democratic Parties were voted for by the people of said State; and that certain persons who then and there were citizens of said State and of the United States, and eligible to

3 hold said office, to wit, Albert B. White, Howard Sutherland, Ben L. Rosenbloom, and William F. Hite, were candidates, then duly qualified, under the laws of the State of West Virginia, as candidates, at said primary election, of the Republican Party, for said office of Senator in the Congress of the United States from said State.

And the grand jurors aforesaid, upon their other aforesaid, do further present, that Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, whose Christian names, respectively, are to said grand jurors unknown, each late of said Southern District of West Virginia, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of May, in the year 1916, to and including said sixth day of June, in the same year, at and within said Southern District of West Virginia, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with divers other persons to said grand jurors unknown, to defraud the United States in the matter of its governmental right to have the candidates of the true choice and preference of said Republican and Democratic Parties nominated for said office, and one of them elected and returned to the Senate of the United States, and given the salary lawfully attaching to said office, to the exclusion of all other persons; and that a description of the means and methods whereby said defendants were, in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, to defraud the United States as aforesaid is as follows, to wit:

4

Said defendants, in order fraudulently to favor the candidacy of said William F. Hite and secure his nomination for said office, and his subsequent election and return thereto, instead of the nomination, election, and return of one of said other candidates, without regard to the true preference and choice of said voters, and to secure for said William F. Hite said salary attaching to said office, were to procure and cause a large number of persons, to wit, one thousand persons, to vote at said primary election, in Adkin district of McDowell County, in said State and Southern District of West Virginia, for said William F. Hite as such Republican candidate for said nomination for said office, and thereby secure the counting, certifying, returning, and canvassing, in due course, of the votes of

said persons in favor of said William F. Hite for said nomination, when no one of said persons was, as each of said defendants, during said period, there well knew, qualified under the laws of said State to vote at said primary election, but all of said persons were disqualified to vote at said primary election by reason of the fact that none of them, as each of said defendants, during said period, there well knew, had been a resident of said State for a sufficient length of time before said primary election to entitle him, under the laws of said State, to vote thereat; and said defendants were also to procure a large number, to wit, four hundred of said persons to vote more than once for said William F. Hite at said primary election in said Adkin district, and thereby secure the certifying, returning, and canvassing, in due course, of such fraudulently repeated votes

5 of said last-mentioned persons in favor of said William F. Hite for said nomination.

Overt acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, certain of said defendants, at the several times and places in that behalf hereinafter mentioned in connection with their names, did do certain acts, as follows, that is to say:

1. Said Edward O'Toole, at divers times during the period of time alleged in this indictment as aforesaid, brought into said Adkin district from other States than said State of West Virginia, divers numbers, amounting in all to two hundred, persons, no one of whom then was or ever had been a resident of said State of West Virginia, for the purpose of causing them to cast their votes, respectively, one or more times, for said William F. Hite at said primary election.

2. Said Guy C. Mace, on June 1, 1916, at Gary, McDowell County, in said Southern District of West Virginia, prepared and caused to be prepared a large number, to wit, 2,500, copies of a paper writing and memorandum, called a "Slate," to be distributed among the persons who were so procured to vote at said primary election by said defendants, as aforesaid, for their use, respectively, in voting at said primary election for said William F. Hite, and as a reminder to them, respectively, that they were to vote for said William F. Hite, and for no other one of said candidates at said primary election.

6 3. Said Guy D. Mace, on June 6, 1916, at and within said Adkin district, hired divers, to wit, seven, automobiles, with drivers, for use in hauling divers of said persons who were so procured to vote at said primary election by said defendants, as aforesaid, from voting precincts in said Adkin district to other voting precincts in that district, to vote more than once, as aforesaid.

4. Said Andrew T. Robertson, on June 6, 1916, at and within said Adkin district, prepared divers, to wit, twenty, affidavits in the form prescribed by the laws of said State of West Virginia in that behalf, for the use of divers, to wit, twenty, of said persons who were procured to vote at said primary election by said defendants, as aforesaid, in registering and casting their votes, respectively, thereat.

5. Said Edward O'Toole, on June 6, 1916, at and within said Adkin district, directed said William P. Kearns to conduct some number, to said grand jurors unknown, of said persons who were procured by said defendants to vote more than once at said primary election, as aforesaid, from the fourth precinct in said district, after they had voted thereat in said primary election, to the third precinct in said district for the purpose of voting again at said primary election in said last-named precinct.

6. Said Andrew T. Robertson, on June 6, 1916, at and within said Adkin district, sent and conveyed some number, to said grand jurors unknown, of the persons who were so procured by said defendants to vote more than once at said primary election, as aforesaid, from the third precinct of said district, after they had voted thereat in said primary election, to the second precinct of said district, for the purpose of voting again in said primary election at said last-named precinct.

7. Said John M. Tully, on June 6, 1916, at and within said Adkin district, sent and conveyed some number, to said grand jurors unknown, of the persons who were so procured by said defendants to vote more than once at said primary election, as aforesaid, from the second precinct of said district, after they had voted thereat in said primary election, to the third precinct of said district, for the purpose of voting again at said last-named precinct in said primary election.

8. Said Andrew T. Robertson, on June 6, 1916, at and within said Adkin district, a short time before the closing of the polls at said primary election, prepared a list of the names of voters registered in the third precinct of said district who had not voted up to that time in said primary election, for the use of the persons, respectively, who were so procured by said defendants to vote more than once at said primary election, as aforesaid, in voting in said primary election in other names than their own names, to wit, in the names of said persons who were registered but had not yet voted in said primary election in said third precinct.

Conclusion.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Edward O'Toole, Guy C. Mase, John M. Tully, Abner N. Harris, William D. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, Emmett

8 Conner, I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, during the period of time, at the place and in manner and form aforesaid, unlawfully and feloniously did conspire to defraud the United States against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

WILLIAM G. BARNHART,
United States Attorney.

Upon the testimony of W. E. Hansen, W. R. Harper, William S. Popejoy, K. G. Wright, and D. G. Lilly, witnesses sworn in open court to give evidence before the grand jury.

(Endorsed:) Filed August 25, 1916. Edwin M. Keatley, clerk.

And on the same day, to wit, at a District Court of the United States for the Southern District of West Virginia, continued and held at Webster Springs, in said district, on Friday, the 25th day of August, A. D. 1916, the following order was made and entered of record:

ORDER.

THE UNITED STATES <i>vs.</i> EDWARD O'TOOLE AND OTHERS.	}	No. 168. Upon an ind. for vio. sec. 37, C. C.
---	---	--

This day came the district attorney, and on his motion this cause is remitted to the District Court of the United States for the
 9 Southern District of West Virginia, sitting at Huntington, for further proceedings to be had therein, and on his further motion a writ of *habeas corpus* is awarded upon the said indictment for the apprehension of the said defendants, directed to the marshal of this court and made returnable at Huntington on the first day of the next term.

And at another day, to wit, at a District Court of the United States for the Southern District of West Virginia, continued and held at Huntington in said district on Friday the 1st day of September, A. D. 1916, the following order was made and entered of record:

ORDER.

THE UNITED STATES <i>vs.</i> EDWARD O'TOOLE AND OTHERS.	}	No. 168. Upon an ind. for vio. sec. 37, C. C.
---	---	--

This day came the district attorney, and on his motion this cause lately pending in the District Court of the United States for the Southern District of West Virginia, sitting at Webster Springs, and which was remitted here, is on his motion docketed herein for further proceedings.

And at another day, to wit, at a District Court of the United States for the Southern District of West Virginia, continued and held at Huntington in said district on Wednesday the 20th day of September, A. D. 1916, the following judgment was made and entered of record:

JUDGMENT.

<p>THE UNITED STATES vs. EDWARD O'TOOLE AND OTHERS.</p>	}	<p>No. 168. Upon an ind. for vio. sec. 37, C. C.</p>
---	---	--

This day came as well the district attorney and D. E. French, Esquire, special assistant to the Attorney General of the United States, as the defendants Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, Emmett Conner, I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, each in his proper person, and by John H. Holt, Esquire, Malcolm Jackson, Esquire, and W. G. Mathews, Esquire, their counsel; and thereupon the said defendants tendered their joint and several demurrer to the said indictment and moved to quash the same, which demurrer was ordered to be filed, and in which demurrer the United States joins; and the matters of law arising upon said demurrer being argued at length by counsel, as well as for the United States as for said defendants, and each of them, was submitted to the court; and the court being of the opinion that the law is for the defendants and for reasons stated in writing and this day filed and made a part of the record in this cause, that the said indictment charges no offense under the Constitution or laws of the United States, the said demurrer is sustained as to said defendants and each of them, to which action and ruling of the court the United States objects and excepts.

And the court here now proceeding to render judgment upon the demurrer and motion to quash as aforesaid, it is considered by the court that the said indictment be quashed and that said defendants Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, Emmett Conner,
 11 I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin be discharged from said indictment and go hence without day.

And thereupon the United States, by its attorneys, prays for a writ of error in this cause from this court to the Supreme Court of the United States, which prayer is granted, and said writ is ordered to be issued.

The demurrer referred to in the foregoing order is in the words and figures as follows:

DEMURRER.

In the District Court of the United States of America for the Southern District of West Virginia, at Huntington.

UNITED STATES	} No. 168. Upon an ind. for vio.
vs.	
EDWARD O'TOOLE AND OTHERS.	sec. 37, C. C.

The joint and separate demurrer of Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, Emmett Conner, I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin to the indictment presented herein against them:

And now come the above-named defendants, and each of them, by their attorneys, and jointly and severally demur to the indictment herein filed against them, and, for cause thereof, say:

1. The United States has no such governmental right as that described in said indictment to be defrauded of.
- 12 2. Neither the Constitution nor laws of the United States recognizes political parties or their nominations, and the United States neither exercises nor enjoys any governmental rights at their hands.
3. Because the primary statute under which the direct general primary alleged in said indictment was held simply recognizes political parties, and provides the machinery by which the governmental rights of the State may be exercised, and the violation of its rights in that behalf punished; and all governmental rights created by this statute, if any, are bestowed upon the State alone.
4. Because the matters and things alleged therein do not constitute any offense against the laws of sovereignty of the United States; and,
5. Because said indictment is in other respects informal, insufficient, and defective.

Wherefore said defendants, and each of them, pray judgment of said indictment, and that the same may be quashed, etc.

JOHN H. HOLT,
MALCOLM JACKSON,
W. G. MATHEWS,
Attorneys for Defendants.

(Endorsed:) Filed September 20, 1916. Edwin M. Keatley, clerk.

The opinion referred to in the foregoing order is in the words and figures as follows:

13

OPINION.

In the District Court of the United States of America for the Southern District of West Virginia, at Huntington.

UNITED STATES OF AMERICA	} No. 168. Upon an ind. for vio. sec.
<i>vs.</i>	
EDWARD O'TOOLE AND OTHERS.	

37, C. C.

WOODS, *Circuit Judge*:

The defendants have demurred to two indictments found against them. The first charges that in a primary election held throughout the State of West Virginia on June 6, 1916, for the nomination of United States Senator and certain other officers of the United States, the defendants, Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, by procuring about a thousand unqualified voters to vote in said election and by repeating 400 of their votes, conspired to injure and defraud Albert B. White, Howard Sutherland, and Ben. L. Rosenbloom, candidates for such offices, in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States, namely, the right to have only the duly qualified Republican voters of West Virginia to vote for the nominees and for them to vote only once.

This indictment is brought under section 19 of the Criminal Code of the United States, which provides:

14 "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, they shall be fined, etc."

The second indictment charges that in a primary election held throughout the State of West Virginia on June 6, 1916, for the nomination of United States Senator and certain other officers of the United States, the defendants named in the above indictment, by procuring about a thousand unqualified voters to vote in said election and by repeating 400 of their votes, conspired to defraud the United States in the matter of its governmental right to have the candidates of the true choice and preference of the Republican and Democratic Parties nominated for the office of Senator, and one of them elected and returned to the Senate and given the salary lawfully attaching to the office to the exclusion of all other persons. This indictment is brought under section 37 of the Criminal Code of the United States, which provides:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined, etc."

The first and comprehensive question raised by the demurrer is whether the citizens of the United States are protected in the electoral rights conferred under the laws of the State of West Virginia providing for the selection of candidates of political parties for the office of United States Senator to be voted for at the general election.

The right of an elector having the requisite qualifications to
15 vote for a Member of the House of Representatives or for United States Senator, and to have his vote counted, is derived from the Constitution and laws of the United States and is protected by section 19 of the Criminal Code above quoted. *Wiley v. Sinkler*, 179 U. S., 58; *Ex parte Yarbrough*, 110 U. S., 651; *Swafford v. Templeton*, 185 U. S., 487; *United States v. Mosley*, 238 U. S., 383.

Up to a recent date there were no State laws regulating the methods of nomination of political parties. These parties were founded on voluntary associations of citizens, and they made their nominations and conducted their affairs without legislative sanction. The candidates were named by caucuses, conventions, or primary elections as the several parties determined. The nomination by a political party, whether by caucus, convention, or primary, is nothing more than an endorsement and recommendation of the nominee to the suffrage of the electors at large. In passing statutes regulating primary elections a State recognizes the important fact that candidates go into the general elections with endorsements of political parties, and it merely provides the conditions upon which that endorsement is to be received. The endorsement of the primary contributes nothing to the legal eligibility of a candidate at the general election. It may be that every citizen eligible under the Constitution of the United States has a political right to be a candidate for United States Senator, but he has no political right derived under the Constitution or statutes of the United States to present himself to the electorate with the advantage of endorsement of any political party, nor has he any right to question the method by which any other person may obtain such an endorsement.

It may be true also that the Congress of the United States has the legislative power to provide rules regulating the primaries
16 for United States Senators and Members of the House of Representatives, but unless it has provided such rules either directly or by necessary implication, a candidate can have no Federal right in the endorsement which any political party may undertake to give under the laws of a State.

It certainly can not be successfully contended that the incidental recognition of the existence of primaries by providing for the expenses to be incurred therein by candidates for the House of Representatives and the Senate is an adoption as Federal legislation of

State statutes on the subject. The Congress may adopt State legislation and thus give it the sanction of its own legislative power (In re Coy, 127 U. S., 731; Ex parte Siebold, 101 U. S., 371; Ex parte Yarbrough, 110 U. S., 651); and it is insisted by the prosecution that Congress has acted and adopted the State statutes by the following enactment of June 4, 1914:

"Chap. 103. An act providing a temporary method of conducting the nomination and election of United States Senators:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the fourth day of March next thereafter.

"SEC. 2. That in any States wherein a United States Senator is hereafter to be elected either at a general election or at any special election called by the executive authority thereof to fill a vacancy, until or unless otherwise specially provided by the legislature thereof, the nomination of candidates for such office not heretofore
17 made shall be made, the election to fill the same conducted, and the result thereof determined, as near as may be in accordance with the laws of such State regulating the nomination of candidates for an election of Members at Large of the National House of Representatives: *Provided*, That in case no provision is made in any State for the nomination or election of Representatives at Large, the procedure shall be in accordance with the laws of such State respecting the ordinary executive and administrative officers thereof who are elected by the vote of the people of the entire State: *And provided further*, That in any case the candidate for Senator receiving the highest number of votes shall be deemed elected.

"Sec. 3. That section two of this act shall expire by limitation at the end of three years from the date of its approval. Approved, June 4, 1914."

At the time this statute was passed the State of West Virginia had no act upon the subject. If it applied to West Virginia at all, it applied by its terms only until the State of West Virginia passed an act providing a primary election for the selection by the several political parties of the candidates to be presented by them for the suffrage of the people at the general election. After the State legislature acted, the Federal statute by its terms could have no application to that State. The provision that the Federal statute should cease to be operative as soon as State legislation on the subject was enacted, the provision that the act should expire by its own limitation at the end of three years from the date of its approval, together with the title of the act, show plainly that it was intended to meet a temporary exigency. Also these provisions show a distinct purpose by Congress to relinquish all control and leave to the States ab-

18 solute authority over the selection of party candidates for the United States Senate as soon as they had actually passed laws on the subject. There is no other constitutional provision or Federal statute relating to Federal control over primary elections.

We think it may be said both on reason and authority that where the word "election" is used without qualification, the reference is to a general election as distinguished from a primary election. *State v. Johnson*, 87 Minn., 221; 91 N. W., 604; *Montgomery v. Chelf*, 118 Ky., 766; 82 S. W., 388; *Gray v. Seitz*, 162 Ind., 1, 69 N. E., 456; *Elliott v. Thompson* (Fed.), post.

Certainly it cannot be contended that the choosing or election by the qualified electors provided for by section 2 of art. 1 of the Constitution of the United States includes the selection of party candidates by primary election, for at that time such elections were unknown. We can find no provision of the Constitution of the United States or of an act of Congress which either directly or by implication warrants the court in holding that the protection of the Federal Government extends to the right of any citizen to participate in a party endorsement of a candidate through a primary election or otherwise. The right is created by party rules or State legislation, and the remedy, if there be one, must be derived from the same source. The conclusion we have reached is sustained by a well-considered opinion of Judge Booth in the District Court for the Western District of Missouri in *Elliott v. Thompson*, decided on October 2, 1915.

We conclude that the indictments charge no conspiracy to injure, oppress, threaten, or intimidate a citizen in the free exercise and enjoyment of any right secured to him by the Constitution or statutes of the United States, or because of having exercised the same, or to commit any offense against the United States or to defraud
19 the United States in any manner or for any purpose. The demurrers are, therefore, sustained. 9/21/16.

(Endorsed:) Filed September 21, 1916. Edwin M. Keatley, clerk.

And at another day, to wit, at a District Court of the United States for the Southern District of West Virginia, continued and held at Huntington, in said district, on Thursday, the 19' day of October, A. D. 1916, the following order was made and entered of record:

ORDER.

THE UNITED STATES <i>vs.</i> EDWARD O'TOOLE AND OTHERS.	}	No. 168. Upon an ind. for vio. sec. 37, C. C.
---	---	--

This day came the United States attorney and presented to the court a petition for a writ of error, accompanied by an assignment of errors, praying that this cause may be reviewed in the Supreme Court of the United States, which petition for a writ of error and assignment of errors are ordered to be filed, and it is ordered that a

writ of error to the judgment of the District Court of the United States for the Southern District of West Virginia, sitting at Huntington, entered in this cause, be allowed. And it is ordered that a duly certified transcript of the record and proceedings in this cause be forwarded to the Supreme Court of the United States at Washington.

The petition for a writ of error and assignment of errors referred to in the foregoing order are in the words and figures as follows:

20

PETITION FOR WRIT OF ERROR.

District Court of the United States for the Southern District of West Virginia.

UNITED STATES OF AMERICA	} No. 168. Upon an ind. for vio.
<i>vs.</i>	
EDWARD O'TOOLE AND OTHERS.	sec. 37, C. C.

Now comes the United States of America, by its attorney, William G. Barnhart, and complains that in the record and proceedings had in this cause, and in the order and judgment sustaining the demurrer to the indictment herein, and sustaining defendants' motion to quash the indictment herein, and dismissing said indictment, which judgment was duly made and filed in the office of the clerk of the United States District Court for the Southern District of West Virginia on September 20, 1916, a manifest error has happened, as will appear in the assignment of errors herewith submitted.

Wherefore, The United States of America prays for the allowance of a writ of error, and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated Charleston, West Virginia, October 16, 1916.

WILLIAM G. BARNHART,
United States Attorney.

(Endorsed:) Filed October 19, 1916. Edwin M. Keatley, clerk.

21

ASSIGNMENT OF ERRORS.

District Court of the United States for the Southern District of West Virginia.

United States of America vs. No. 168, upon an ind. for vio. sec. 37 C. C., Edward O'Toole and others.

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred in the decision of the court herein, sustaining defendants' demurrer and motion to quash the indictment:

I. The court erred in holding as a matter of law that the said United States of America is without jurisdiction under the provi-

sions of section 19 of the Criminal Code of the United States of the matters alleged in counts one, two, and three of the indictment.

II. The court erred in sustaining the demurrer to the indictment.

III. The court erred in sustaining the motion to quash the indictment.

Wherefore the United States of America prays that the judgment of the District Court of the United States for the Southern District of West Virginia be, under the act of Congress approved March 2, 1907, reviewed by the Supreme Court of the United States, and said judgment be reversed.

WILLIAM G. BARNHART,
*United States Attorney for the
Southern District of West Virginia.*

(Endorsed:) Filed October 19, 1916. Edwin M. Keatley, clerk.

22 Upon the entry of the foregoing order there was issued from the office of the clerk of the District Court of the United States for the Southern District of West Virginia, a writ of error to the judgment herein, said writ of error being in the words and figures as follows:

WRIT OF ERROR.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judge of the District Court of the United States for the Southern District of West Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of the United States for the Southern District of West Virginia, before you, or some of you, between The United States of America, plaintiff, and Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, defendants; a manifest error hath happened, to the great damage of the said The United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

23

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of October, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL OF COURT.]

EDWIN M. KEATLEY,
*Clerk of the United States District Court
for the Southern District of West Virginia.*

Allowed by Hon. Benj. F. Keller, Judge of the United States District Court for the Southern District of West Virginia.

CERTIFICATE OF SERVICE.

The foregoing writ of error has been duly served by the filing of a duly attested copy thereof in the office of the clerk of said court on this the 19th day of October, A. D. 1916.

Attest:

EDWIN M. KEATLEY, *Clerk.*

Upon the awarding of said writ of error there was issued a citation to the said defendants and each of them, which, together with the acceptance of service thereon, are in the words and figures as follows:

CITATION.

UNITED STATES OF AMERICA, ss:

24 *To Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of West Virginia, wherein The United States of America is plaintiff in error and you are defendants in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Benj. F. Keller, Judge of the United States District Court for the Southern District of West Virginia, this 19th day of October, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL OF COURT.]

BENJ. F. KELLER,
*Judge of the United States District
Court for the Southern District of West Virginia.*

ACCEPTANCE OF SERVICE.

25 Service of the within citation is accepted this 31st day of October, A. D. 1916, for and on behalf of Edward O'Toole,

Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, to have the same effect, and none other, as if served by the United States marshal for the Southern District of West Virginia.

JOHN H. HOLT,

WM. GORDON MATHEWS,

Attorneys for above-named defendants.

CLERK'S CERTIFICATE.

United States of America, Southern District of West Virginia, ss:

I, Edwin M. Keatley, clerk of the District Court of the United States for the Southern District of West Virginia, do certify that the foregoing is a true and complete transcript of the record and proceedings on writ of error in the case of The United States of America vs. Edward O'Toole and others, and now of record in my office.

In testimony whereof, I hereto set my hand and the seal of said court, at Huntington, in said district, this the 1st day of November, A. D. 1916, and in the 141st year of the independence of the United States of America.

[SEAL.]

EDWIN M. KEATLEY,

Clerk, D. C. U. S. S. D. W. Va.

26 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judge of the District Court of the United States for the Southern District of West Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Dist. Ct. U. S. So. Dist. of W. Va., before you, or some of you, between The United States of America, plaintiff, and Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, defendants, a manifest error hath happened, to the great damage of the said The United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the

said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 19th day of October, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

EDWIN M. KEATLEY,
*Clerk of the United States District Court
for the Southern District of West Virginia.*

Allowed by Hon. BENJ. F. KELLER,
*Judge of the United States District Court for the Southern
District of West Virginia.*

27 UNITED STATES OF AMERICA, ss:

To Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker and Emmett Conner and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of West Virginia, wherein The United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Benj. F. Keller, Judge of the United States District Court for the Southern District of West Virginia, this 19th day of October, in the year of our Lord one thousand nine hundred and sixteen.

BENJ. F. KELLER,
*Judge of the United States District Court
for the Southern District of West Virginia.*

28

ACCEPTANCE OF SERVICE.

Service of the within citation is accepted this 31st day of October, A. D. 1916, for and on behalf of Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D.

Strohecker and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, to have the same effect and none other, as if served by the United States marshal for the Southern District of West Virginia.

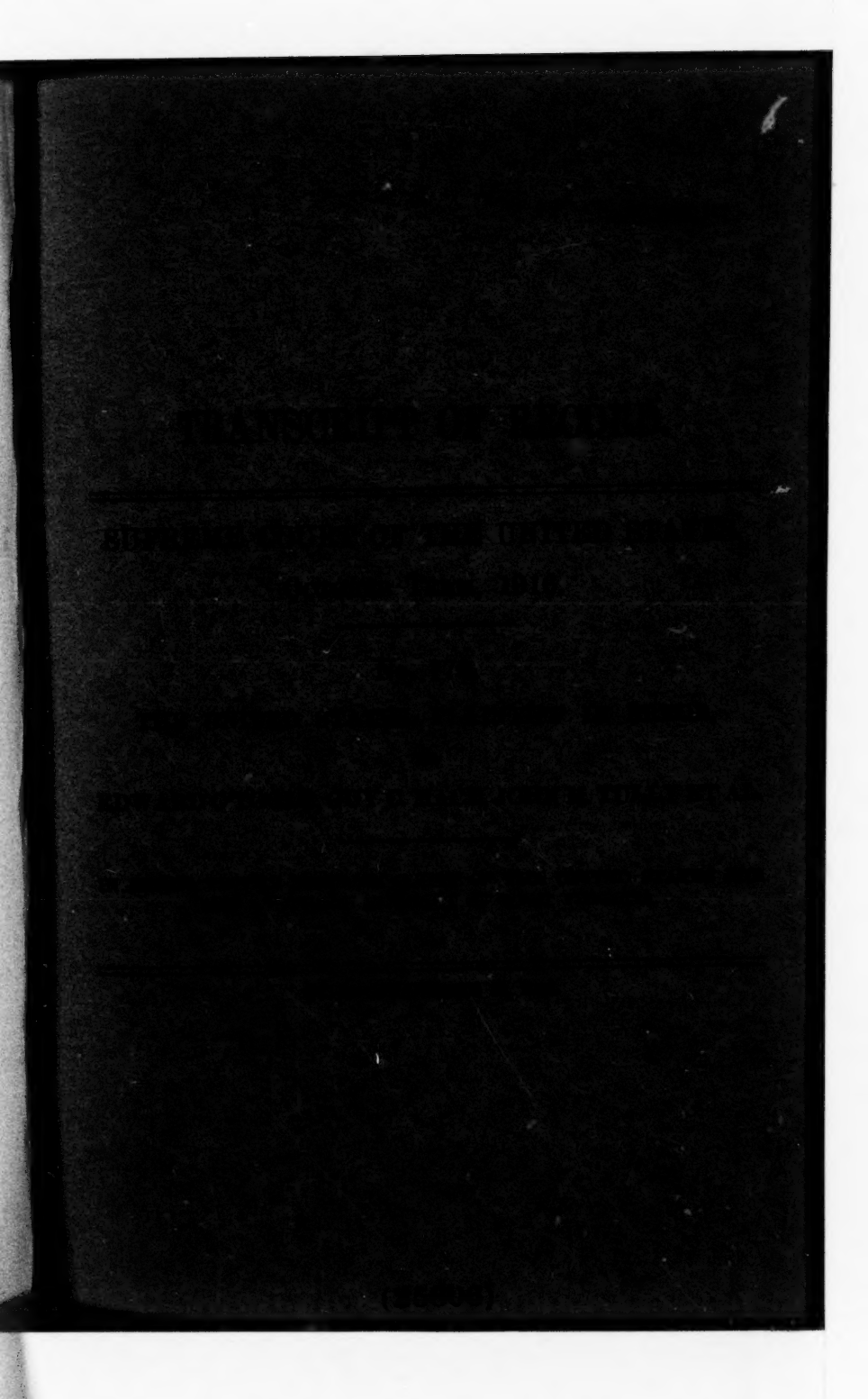
JOHN H. HOLT,

WM. GORDON MATHEWS,

Attorneys for above-named defendants.

29 (Endorsement on cover:) File No. 25,605. S. West Virginia,
D. C. U. S. Term No. 775. The United States, Plaintiff in
Error, *vs.* Edward O'Toole, Guy C. Mace, John M. Tully et al.
Filed November 13th, 1916. File No. 25,605.

○



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 776.

THE UNITED STATES, PLAINTIFF IN ERROR,

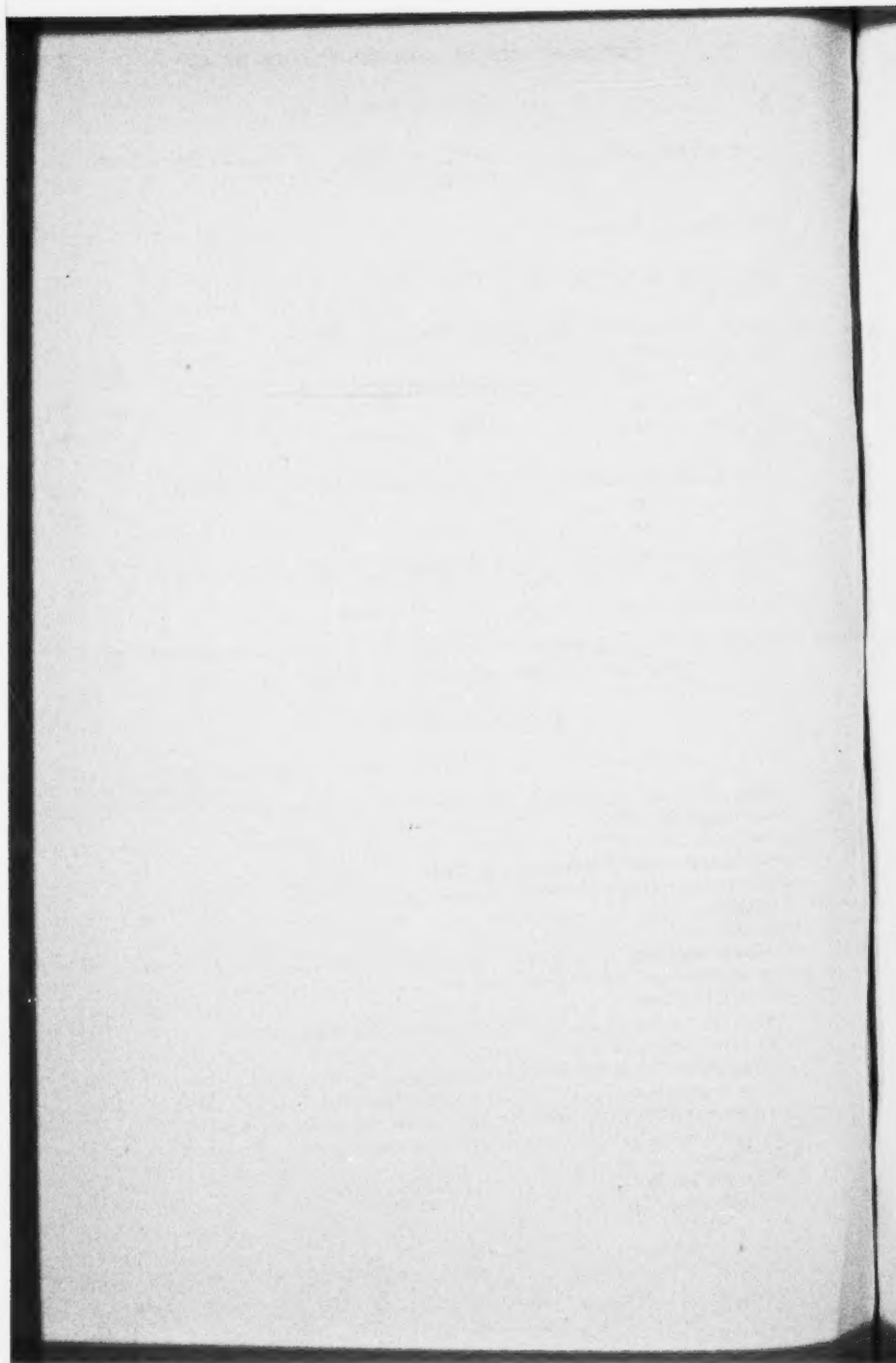
VS.

EDWARD O'TOOLE, GUY C. MACE, JOHN M. TULLY ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA.

INDEX.

	Original.	Print.
Caption.....	1	1
Order filing indictment.....	1	1
Indictment.....	2	1
Order remitting case to Huntington for trial.....	9	5
Order docketing case at Huntington.....	9	5
Judgment.....	10	6
Demurrer.....	11	7
Opinion of the court.....	13	8
Order allowing writ of error.....	20	12
Petition for writ of error.....	20	12
Assignment of errors.....	21	13
Writ of error (copy).....	22	13
Certificate of service of writ of error.....	24	14
Citation (copy).....	24	14
Acceptance of service of citation.....	25	15
Clerk's certificate.....	25	15
Writ of error.....	27	16
Citation and service.....	28	16



1

TRANSCRIPT OF THE RECORD.

In the District Court of the United States for the Southern District of West Virginia, at Huntington.

The United States of America *vs.* No. 169 Upon an Ind. for vio. sec. 19 C. C., Edward O'Toole and others.

D. E. French, Esquire, Special Assistant to the Attorney General of the United States, and William G. Barnhart, Esquire, United States district attorney for the Southern District of West Virginia, for the United States of America, and plaintiff in error; John H. Holt, Esquire, of Holt, Duncan & Holt, William Gordon Mathews, Esquire, of McClintic, Mathews & Campbell, and Malcolm Jackson, Esquire, of Brown, Jackson & Knight, for defendants and defendants in error.

Be it remembered, that, heretofore, to wit: At a District Court of the United States for the Southern District of West Virginia, continued and held at Webster Springs, in said district, on Friday, the 25th day of August, A. D. 1916, the following order was made and entered of record.

ORDER.

The United States vs. No. 169, Upon an Ind. for vio. sec. 69 C. C., Edward O'Toole and others.

2 The grand jury appeared in court pursuant to retirement and presented an indictment against said defendants, endorsed "A true bill," which indictment is ordered to be filed.

The indictment referred to in the foregoing order is in the words and figures as follows:

INDICTMENT.

In the District Court of the United States of America for the Southern District of West Virginia.

Of the August term, in the year 1916.

Southern District of West Virginia, ss: The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Southern District of West Virginia at the August term thereof in the year 1916, held at Webster Springs, and inquiring for that district, upon their oath present, that, on the 6th day of June, 1916, a direct general primary election, under the laws of the State of West Virginia, for the nomination of candidates of political parties to be voted for at the general election to be held in said State on the 7th day of November, 1916, was held throughout the State of West Virginia, at which said primary election

candidates, for nominations for the office, among others, of Senator in the Congress of the United States, from said State of West Virginia, of the Republican and Democratic parties, were voted for by the people of said State; and that certain persons who then and there were citizens of said State and of the United States, and eligible to hold said office, to wit: Albert B. White, Howard Sutherland,

Ben L. Rosenbloom, and William F. Hite, were candidates, 3 then duly qualified, under the laws of the State of West Virginia, as candidates, at said primary election, of the Republican Party, for said office of Senator in the Congress of the United States from said State.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, whose Christian names, respectively, are to said grand jurors unknown, each late of said Southern District of West Virginia, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of May, in the year 1916, to and including said sixth day of June, in the same year, at and within said Southern District of West Virginia, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with divers other persons to said grand jurors unknown, to injure and oppress said Albert B. White, Howard Sutherland, and Ben L. Rosenbloom, and each of them, citizens of said State of West Virginia and of the United States as aforesaid, in the free exercise and enjoyment of certain rights and privileges secured to them, and each of them, the said Albert B. White, Howard Sutherland, and Ben L. Rosenbloom, by the Constitution and laws of the United States; that is to say, in the free exercise and enjoyment of the right and privilege of having only the duly qualified Republican voters of said State of West Virginia vote for some one of said

4 Republican candidates at said primary election, the right and privilege of having each Republican voter vote once only for some one of said candidates, and the right and privilege of having no votes cast, counted, certified, returned, or canvassed at said election for any candidate for the nomination for said office except such as were the votes of Republican voters duly qualified under the laws of said State; and that a description of the means and methods whereby said Albert B. White, Howard Sutherland, and Ben L. Rosenbloom were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by said defendants is as follows, to wit:

Said defendants, in order fraudulently to favor the candidacy of said William F. Hite and secure his nomination for said office instead of that of one of said other candidates, without regard to

the true preference and choice of said voters, were to procure and cause a large number of persons, to wit, one thousand persons, to vote at said primary election in Adkin district of McDowell County, in said State and Southern District of West Virginia, for said William F. Hite as such Republican candidate for said nomination for said office, and thereby secure the counting, certifying, returning, and canvassing, in due course, of the votes of said persons in favor of said William F. Hite for said nomination, when no one of said persons was, as each of said defendants, during said period, there well knew, qualified under the laws of said State to vote at said primary election, but all of said persons were disqualified to vote at said primary election by reason of the fact that none of them, as each of said defendants during said period there
5 well knew, had been a resident of said State for a sufficient length of time before said primary election to entitle him under the laws of said State to vote thereat; and said defendants were also to procure a large number, to wit, four hundred, of said persons to vote more than once for said William F. Hite at said primary election in said Adkin district, and thereby secure the counting, certifying, returning, and canvassing, in due course, of such fraudulently repeated votes of said last-mentioned persons in favor of said William F. Hite for said nomination.

Overt acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, certain of said defendants, at the several times and places in that behalf hereinafter mentioned in connection with their names, did do certain acts, as follows, that is to say:

1. Said Edward O'Toole at divers times during the period of time alleged in this indictment as aforesaid brought into said Adkin district, from other States than said State of West Virginia divers numbers, amounting in all to two hundred, persons, no one of whom then was or ever had been a resident of said State of West Virginia, for the purpose of causing them to cast their votes, respectively, one or more times for said William F. Hite at said primary election.

2. Said Guy C. Mace on June 1, 1916, at Gary, McDowell County, in said southern district of West Virginia prepared and caused to be prepared a large number, to wit, 2,500 copies of a paper
6 writing and memorandum, called a "slate," to be distributed among the persons who were so procured to vote at said primary election by said defendants as aforesaid for their use, respectively, in voting at said primary election for said William F. Hite, and as a reminder to them, respectively, that they were to vote for said William F. Hite and for no other one of said candidates at said primary election.

3. Said Guy C. Mace on June 6, 1916, at and within said Adkin district hired divers, to wit, seven, automobiles, with drivers, for

use in hauling divers of said persons who were so procured to vote at said primary election by said defendants as aforesaid from voting precincts in said Adkin district to other voting precincts in that district to vote more than once as aforesaid.

4. Said Andrew T. Robertson on June 6, 1916, at and within said Adkin district prepared divers, to wit, twenty affidavits in the form prescribed by the laws of said State of West Virginia in that behalf for the use of divers, to wit, twenty of said persons who were procured to vote at said primary election by said defendants as aforesaid in registering and casting their votes, respectively, thereat.

5. Said Edward O'Toole on June 6, 1916, at and within said Adkin district directed said William P. Kearns to conduct some number, to said grand jurors unknown, of said persons who were procured by said defendants to vote more than once at said primary election as aforesaid, from the fourth precinct in said district, after they had voted thereat in said primary election, to the third precinct in said district, for the purpose of voting again at said primary election in said last-named precinct.

6. Said Andrew T. Robertson, on June 6, 1916, at and within said Adkin District, sent and conveyed some number, to said grand jurors unknown, of the persons who were so procured by said defendants to vote more than once at said primary election, as aforesaid, from the third precinct of said district, after they had voted thereat in said primary election, to the second precinct of said district, for the purpose of voting again in said primary election at said last-named precinct.

7. Said John M. Tully, on June 6, 1916, at and within said Adkin District, sent and conveyed some number, to said grand jurors unknown, of the persons who were so procured by said defendants to vote more than once at said primary election, as aforesaid, from the second precinct of said district, after they had voted thereat in said primary election to the third precinct of said district, for the purpose of voting again at said last-named precinct in said primary election.

8. Said Andrew T. Robertson, on June 6, 1916, at and within said Adkin District, a short time before the closing of the polls at said primary election, prepared a list of the names of voters registered in the third precinct of said district, who had not voted up to that time in said primary election, for the use of the persons respectively, who were so procured by said defendants to vote more than once at said primary election, as aforesaid, in voting in said primary election in other names than their own names, to wit, in the names of said persons who were registered but had not yet voted in said primary election in said third precinct.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding,

Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, Emmett Conner, I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, during the period of time, at the place, and in manner and form, aforesaid, unlawfully and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States, against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

WILLIAM G. BARNHART,
United States Attorney.

Upon the evidence of W. E. Hansen, W. R. Harper, W. S. Popejoy, K. G. Wright, and D. G. Lilly, witnesses sworn in open court to give evidence before the grand jury.

(Endorsed:) Filed August 25, 1916, Edwin M. Keatley, Clerk.

And on the same day, to wit, at a district court of the United States for the Southern District of West Virginia, continued and held at Webster Springs, in said district, on Friday, the 25th day of August, A. D. 1916, the following order was made and entered of record:

ORDER.

The United States vs. No. 169, upon an ind. for vio. sec. 19 C. C., Edward O'Toole and others.

This day came the district attorney, and on his motion this cause is remitted to the United States District Court for the Southern District of West Virginia, sitting at Huntington, for further proceedings to be had therein.

Thereupon Wm. R. Harper, W. S. Popejoy, K. G. Wright, W. E. Hansen, and D. G. Lilly, witnesses in this cause, here in open court entered into a recognizance in the sum of one hundred dollars each, conditioned for their appearance before the judge of this court at Huntington, on the first day of the next term.

And at another day, to wit: At a District Court of the United States for the Southern District of West Virginia, continued and held at Huntington, in said district, on Friday, the 1st day of September, A. D. 1916, the following order was made and entered of record:

ORDER.

The United States vs. No. 169, upon an ind. for vio. sec. 19 C. C., Edward O'Toole and others.

This day came the district attorney, and on his motion this cause lately pending in the District Court of the United States for the

10 Southern District of West Virginia, sitting at Webster Springs, and which was remitted here, is on his motion docketed herein for further proceedings.

And at another day, to wit: At a District Court of the United States for the Southern District of West Virginia, continued and held at Huntington, in said district, on Wednesday, the 20th day of September, A. D. 1916, the following judgment was made and entered of record:

JUDGMENT.

The United States vs. No. 169, upon an ind. for vio. sec. 19 C. C., Edward O'Toole and others.

This day came as well the district attorney and D. E. French, Esquire, special assistant to the Attorney General of the United States, as the defendants Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, Emmett Conner, I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, each in his proper person, and by John H. Holt, Esquire, Malcolm Jackson, Esquire, and W. G. Mathews, Esquire, their counsel; and thereupon the said defendants tendered their joint and several demurrer to the said indictment and moved to quash the same, which demurrer was ordered to be filed, and in which demurrer the United States joins; and the matters of law arising upon said demurrer being argued at length by counsel, as well as for the United States as for said defendants, and each of them, was submitted to the court, and the court being of the opinion that the law is for the defendants, and for reasons stated in writing and this day filed and made a part of the record in this cause,

11 that the said indictment charges no offense under the Constitution or laws of the United States, the said demurrer is sustained as to said defendants and each of them, to which action and ruling of the court the United States objects and excepts.

And the court here now proceeding to render judgment upon the demurrer and motion to quash as aforesaid, it is considered by the court that the said indictment be quashed and that said defendants Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, Emmett Conner, I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin be discharged from said indictment and go hence without day.

And thereupon the United States, by its attorneys, prays for a writ of error in this cause from this court to the Supreme Court of the United States, which prayer is granted, and said writ is ordered to be issued.

The demurrer referred to in the foregoing order is in the words and figures as follows:

DEMURRER.

In the District Court of the United States of America for the Southern District of West Virginia at Huntington.

The United States vs. No. 169, upon an ind. for vio. sec. 19, C. C., Edward O'Toole and others.

The joint and separate demurrer of Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, 12 Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, Emmett Conner, I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin to the indictment presented herein against them.

And now come the above-named defendants, and each of them, by their attorneys, and jointly and severally demur to the indictment herein filed against them, and for cause thereof say:

1. The election alleged in the indictment was not an election for a United States Senator or other officer, but was solely a primary election to nominate candidates for office, and was created and governed wholly by the laws of the State of West Virginia, and any and all rights at or in said election were derived under the laws of said State and not in any manner under the Constitution or laws of the United States, and the matters and things alleged in the indictment, or any of them, did not, and do not, constitute an interference with any right or privilege secured to the said Albert B. White, Howard Sutherland, and Ben L. Rosenbloom, or either of them, by the Constitution or laws of the United States; but their said rights and privileges, and the rights and privileges of each of them, as candidates in the primary election for the nomination to the office of United States Senator from the State of West Virginia, were guaranteed to them by, and are exclusively dependent upon, the laws of said State, and said indictment does not allege any offense of which this court has or can take jurisdiction.

2. Because section 19 of the Criminal Code relates solely to conspiracies against the exercise or enjoyment of personal and individual rights and privileges secured to citizens under the 13 Constitution and laws of the United States, and the alleged rights and privileges in said indictment set forth as secured to Albert B. White, Howard Sutherland, and Ben L. Rosenbloom do not constitute rights or privileges so secured.

3. Because the matters and things alleged therein do not constitute any offense against the laws or sovereignty of the United States, and,

4. Because said indictment is in other respects informal, insufficient, and defective.

Wherefore said defendants, and each of them, pray judgment of said indictment, and that the same may be quashed, etc.

JOHN H. HOLT,
MALCOLM JACKSON,
W. G. MATHEWS,

Attorneys for Defendants.

(Endorsed:) Filed September 20, 1916. Edwin M. Keatley, clerk.

The opinion referred to in the foregoing order is in the words and figures as follows:

OPINION.

In the District Court of the United States of America for the Southern District of West Virginia, at Huntington.

United States of America vs. No. 169, upon an ind. for vio. sec. 19 C. C., Edward O'Toole and others.

WOODS, *Circuit Judge:*

The defendants have demurred to two indictments found
14 against them. The first charges that in a primary election held throughout the State of West Virginia on June 6, 1916, for the nomination of United States Senator and certain other officers of the United States, the defendants, Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, by procuring about a thousand unqualified voters to vote in said election and by repeating 400 of their votes, conspired to injure and defraud Albert B. White, Howard Sutherland, and Ben. L. Rosenbloom, candidates for such offices, in the free exercise and enjoyment of certain rights and privileges secured to them by the constitution and laws of the United States, namely, the right to have only the duly qualified Republican voters of West Virginia to vote for the nominees and for them to vote only once.

This indictment is brought under section 19 of the Criminal Code of the United States, which provides:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, they shall be fined, etc."

The second indictment charges that in a primary election held throughout the State of West Virginia on June 6, 1916, for the nomination of United States Senator and certain other officers of the United States, the defendants named in the above indictment, by procuring about a thousand unqualified voters to vote in said election

and by repeating 400 of their votes conspired to defraud the United States in the matter of its governmental right to have the
15 candidates of the true choice and preference of the Republican and Democratic Parties nominated for the office of Senator, and one of them elected and returned to the Senate and given the salary lawfully attaching to the office to the exclusion of all other persons. This indictment is brought under section 37 of the Criminal Code of the United States, which provides:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined, etc.,"

The first and comprehensive question raised by the demurrer is whether the citizens of the United States are protected in the electoral rights conferred under the laws of the State of West Virginia providing for the selection of candidates of political parties for the office of United States Senator to be voted for at the general election.

The right of an elector having the requisite qualifications to vote for a Member of the House of Representatives or for United States Senator, and to have his vote counted, is derived from the Constitution and laws of the United States, and is protected by section 19 of the Criminal Code above quoted. *Wiley v. Sinkler*, 179 U. S., 58, *Ex parte Yarbrough*, 110 U. S., 651; *Swafford v. Templeton*, 185 U. C., 487; *United States v. Mosley*, 238 U. S., 383.

Up to a recent date there were no State laws regulating the methods of nomination of political parties. These parties were founded on voluntary association of citizens, and they made their nominations and conducted their affairs without legislative sanction. The candidates were named by caucuses, conventions, or primary elections as the several parties determined. The nomination by a
16 political party, whether by caucus, convention, or primary, is nothing more than an endorsement and recommendation of the nominee to the suffrage of the electors at large. In passing statutes regulating primary elections a State recognizes the important fact that candidates go into the general elections with endorsement of political parties, and it merely provides the conditions upon which that endorsement is to be received. The endorsement of the primary contributes nothing to the legal eligibility of a candidate at the general election. It may be that every citizen eligible under the Constitution of the United States has a political right to be a candidate for United States Senator, but he has no political right derived under the Constitution or statutes of the United States to present himself to the electorate with the advantage of endorsement of any political party, nor has he any right to question the method by which any other person may obtain such an endorsement.

It may be true also that the Congress of the United States has the legislative power to provide rules regulating the primaries for

United States Senators and Members of the House of Representatives, but unless it has provided such rules, either directly or by necessary implication, a candidate can have no Federal right in the endorsement which any political party may undertake to give under the laws of a State.

It certainly can not be successfully contended that the incidental recognition of the existence of primaries by providing for the expenses to be incurred therein by candidates for the House of Representatives and the Senate is an adoption as Federal legislation of State statutes on the subject. The Congress may adopt State
17 legislation and thus give it the sanction of its own legislative power (In re Coy 127, U. S., 731, Ex parte Siebold, 101 U. S., 371, Ex parte Yarbrough, 110 U. S., 651); and it is insisted by the prosecution that Congress has acted and adopted the State statutes by the following enactment of June 4, 1914:

"Chap. 103. An act providing a temporary method of conducting the nomination and election of United States Senators.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the fourth day of March next thereafter.

"SEC. 2. That in any State wherein a United States Senator is hereafter to be elected either at a general election or at any special election called by the executive authority thereof to fill a vacancy, until or unless otherwise specially provided by the legislature thereof, the nomination of candidates for such office not heretofore made shall be made, the election to fill the same conducted, and the result thereof determined, as near as may be in accordance with the laws of such State regulating the nomination of candidates for an election of Members at Large of the National House of Representatives: Provided, That in case no provision is made in any State for the nomination or election of Representatives at Large, the procedure shall be in accordance with the laws of such State respecting the ordinary executive and administrative officers thereof who are elected by the vote of the people of the entire State: And provided
18 further, That in any case the candidate for Senator receiving the highest number of votes shall be deemed elected.

"SEC. 3. That section two of this act shall expire by limitation at the end of three years from the date of its approval. Approved June 4, 1914."

At the time this statute was passed the State of West Virginia had no act upon the subject. If it applied to West Virginia at all it applied by its terms only until the State of West Virginia passed

an act providing a primary election for the selection by the several political parties of the candidates to be presented by them for the suffrage of the people at the general election. After the State legislature acted the Federal statute by its terms could have no application to that State. The provision that the Federal statute should cease to be operative as soon as State legislation on the subject was enacted, the provision that the act should expire by its own limitation at the end of three years from the date of its approval, together with the title of the act, show plainly that it was intended to meet a temporary exigency. Also these provisions show a distinct purpose by Congress to relinquish all control and leave to the States absolute authority over the selection of party candidates for the United States Senate as soon as they had actually passed laws on the subject. There is no other constitutional provision or Federal statute relating to Federal control over primary elections.

We think it may be said both on reason and authority that where the word "election" is used without qualification the reference is to a general election as distinguished from a primary election. *State v. Johnson*, 87 Minn. 221, 91 N. W. 604; *Montgomery v. Chelf*, 118 Ky. 766, 82 S. W. 388; *Gray v. Seitz*, 162 Ind. 1, 69 N. E. 456; *Elliott v. Thompson* (Fed.) post.

19 Certainly it cannot be contended that the choosing or election by the qualified electors provided for by section 2 of Art. 1 of the Constitution of the United States includes the selection of party candidates by primary election, for at that time such elections were unknown. We can find no provision of the Constitution of the United States or of an act of Congress which either directly or by implication warrants the court in holding that the protection of the Federal Government extends to the right of any citizen to participate in a party endorsement of a candidate through a primary election or otherwise. The right is created by party rules or State legislation, and the remedy, if there be one, must be derived from the same source. The conclusion we have reached is sustained by a well-considered opinion of Judge Booth in the District Court for the Western District of Missouri in *Elliott v. Thompson*, decided on October 2, 1915.

We conclude that the indictments charge no conspiracy to injure, oppress, threaten, or intimidate a citizen in the free exercise and enjoyment of any right secured to him by the Constitution or statutes of the United States, or because of having exercised the same, or to commit any offense against the United States, or to defraud the United States in any manner or for any purpose. The demurrers are therefore sustained. 9/21/16.

(Endorsed:) Filed September 21, 1916. Edwin M. Keatley, clerk.

And at another day, to wit: At a District Court of the United States for the Southern District of West Virginia, continued and

held at Huntington, in said district, on Thursday, the 19th day of October, A. D. 1916, the following order was made and entered of record:

20

ORDER.

*The United States vs. No. 169, upon an ind. for vio. sec. 19 C. C.,
Edward O'Toole and others.*

This day came the United States attorney and presented to the court a petition for a writ of error, accompanied by an assignment of errors, praying that this cause may be reviewed in the Supreme Court of the United States; which petition for a writ of error and assignment of errors are ordered to be filed; and it is ordered that a writ of error to the judgment of the District Court of the United States for the Southern District of West Virginia, sitting at Huntington, entered in this cause, be allowed. And it is ordered that a duly certified transcript of the record and proceedings in this cause be forwarded to the Supreme Court of the United States at Washington.

The petition for a writ of error and assignment of errors referred to in the foregoing order are in the words and figures as follows:

PETITION FOR WRIT OF ERROR.

District Court of the United States for the Southern District of
West Virginia.

*United States of America vs. No. 169, upon an ind. for vio. sec. 19
C. C., Edward O'Toole and others.*

Now comes the United States of America, by its attorney, William G. Barnhart, and complains that in the record and proceedings had in this cause and in the order and judgment sustaining the demurrer
21 to the indictment herein, and sustaining defendants' motion to quash the indictment herein and dismissing said indictment, which judgment was duly made and filed in the office of the clerk of the United States District Court for the Southern District of West Virginia on September 20, 1916, a manifest error has happened, as will appear in the assignment of errors herewith submitted.

Wherefore, the United States of America prays for the allowance of a writ of error, and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated: Charleston, West Virginia, October 16, 1916.

WILLIAM G. BARNHART,
United States Attorney.

(Endorsed:) Filed October 19, 1916. Edwin M. Keatley, Clerk.

ASSIGNMENT OF ERRORS.

District Court of the United States for the Southern District of West Virginia.

United States of America, vs. No. 169, upon an ind. for vio. sec. 19 C. C., Edward O'Toole and others.

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred in the decision of the court herein, sustaining defendants' demurrer and motion to quash the indictment.

22 I. The court erred in holding as a matter of law that the said United States of America is without jurisdiction, under the provisions of section 19 of the criminal code of the United States, of the matters alleged in counts one, two, and three of the indictment.

II. The court erred in sustaining the demurrer to the indictment.

III. The court erred in sustaining the motion to quash the indictment.

Wherefore the United States of America prays that the judgment of the District Court of the United States for the Southern District of West Virginia, be, under the act of Congress approved March 2, 1907, reviewed by the Supreme Court of the United States, and said judgment be reversed.

WILLIAM G. BARNHART,
*United States Attorney for the Southern
District of West Virginia.*

(Endorsed:) Filed October 19, 1916. Edwin M. Keatley, Clerk.

Upon the entry of the foregoing order there was issued from the office of the clerk of the District Court of the United States for the Southern District of West Virginia, a writ of error to the judgment herein, said writ of error being in the words and figures as follows:

WRIT OF ERROR.

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judge of the District Court of the United States for the Southern
23 *District of West Virginia, greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of the United States for the Southern District of West Virginia, before you, or some of you, between The United States of America, plaintiff, and Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee,

John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, defendants, a manifest error hath happened, to the great damage of the said The United States of America, as by its complaint appears. We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of October, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL OF COURT.]

EDWIN M. KEATLEY,

*Clerk of the United States District Court for the
Southern District of West Virginia.*

24 Allowed by Hon. Benj. F. Keller, judge of the United States District Court for the Southern District of West Virginia.

CERTIFICATE OF SERVICE.

The foregoing writ of error has been duly served by the filing of a duly attested copy thereof in the office of the clerk of said court on this the 19th day of October, A. D. 1916.

Attest:

EDWIN M. KEATLEY, *Clerk.*

Upon the awarding of said writ of error there was issued a citation to the said defendants, and each of them, which, together with the acceptance of service thereon, are in the words and figures as follows:

CITATION.

UNITED STATES OF AMERICA, ss:

To Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within 30 days from the

date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Southern District of West Virginia, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Benj. F. Keller, Judge of the United States District Court for the Southern District of West Virginia, this 19th day of October, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL OF COURT.]

BENJ. F. KELLER,
*Judge of the United States District Court
for the Southern District of West Virginia.*

ACCEPTANCE OF SERVICE.

Service of the within citation is accepted this 31st day of October, A. D. 1916, for and on behalf of Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, to have the same effect and none other, as if served by the United States marshal for the Southern District of West Virginia.

JOHN H. HOLT,
WM. GORDON MATHEWS,
Attorneys for above-named defendants.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,

Southern District of West Virginia, ss:

I, Edwin M. Keatley, clerk of the District Court of the United States for the Southern District of West Virginia, do certify that the foregoing is a true and complete transcript of the record and proceedings on writ of error in the case of the United States of America vs. Edward O'Toole and others, and now of record in my office.

In testimony whereof, I hereto set my hand and the seal of said court, at Huntington, in said district this the 1st day of November, A. D. 1916, and in the 141st year of the Independence of the United States of America.

[SEAL.]

EDWIN M. KEATLEY,
Clerk, D. C. U. S. S. D. W. Va.

27 UNITED STATES OF AMERICA, ss:

The President of the United States, to the honorable the judge of the District Court of the United States for the Southern District of West Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Dist. Ct. U. S., So. Dist. of W. Va., before you, or some of you, between the United States of America, plaintiff, and Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of October, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

EDWIN M. KEATLEY,
*Clerk of the United States District Court for the
Southern District of West Virginia.*

Allowed by Hon. Benj. F. Keller, judge of the United States District Court for the Southern District of West Virginia.

28 UNITED STATES OF AMERICA, ss:

To Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of West Virginia, wherein the United States of America is

plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Benj. F. Keller, judge of the United States District Court for the Southern District of West Virginia, this 19th day of October, in the year of our Lord one thousand nine hundred and sixteen.

BENJ. F. KELLER,
*Judge of the United States District Court
for the Southern District of West Virginia.*

29

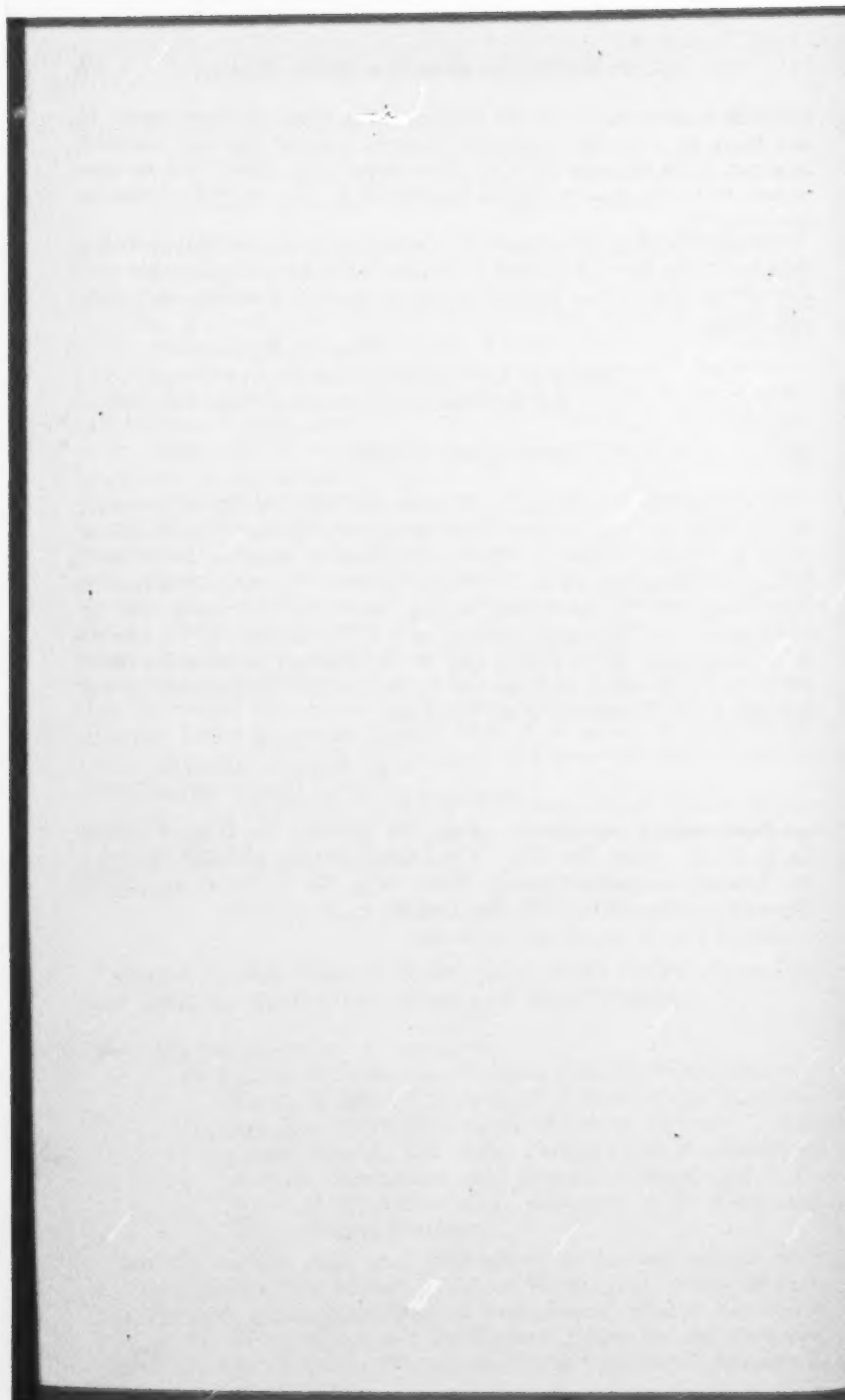
ACCEPTANCE OF SERVICE.

Service of the within citation is accepted this 31st day of October, A. D. 1916, for and on behalf of Edward O'Toole, Guy C. Mace, John M. Tully, Abner N. Harris, William P. Kearns, Neil Friel, Willis W. Harding, Jesse H. Petty, Everett Woodson, Andrew T. Robertson, Roy E. Lee, John Young, John M. Davidson, Earl D. Strohecker, and Emmett Conner, and I. H. Dunn, E. V. Albert, J. D. Jennings, A. E. Riley, and W. G. Martin, to have the same effect and none other as if served by the United States marshal for the Southern District of West Virginia.

JOHN H. HOLT,
WM. GORDON MATHEWS,
Attorneys for above-named defendants.

(Endorsement on cover:) File No. 25,606. S. West Virginia D. C. U. S. Term No. 776. The United States, plaintiff in error, vs. Edward O'Toole, Guy C. Mace, John M. Tully, et al. Filed November 13th, 1916. File No. 25,606.

O



In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES, PLAINTIFF IN ERROR,	}	No. 775.
v.		
EDWARD O'TOOLE ET AL.		

THE UNITED STATES, PLAINTIFF IN ERROR,	}	No. 776.
v.		
EDWARD O'TOOLE ET AL.		

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA.*

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and in accordance with the provisions of the Criminal Appeals Act, 34 Stat. 1246, respectfully moves the court to advance the above-entitled causes for joint hearing on a day convenient to the court.

Two indictments were returned against defendants in the District Court of the United States for the Southern District of West Virginia.

No. 775 was an indictment charging a conspiracy to injure, etc., certain candidates for the Repub-

lican nomination for the office of United States Senator from West Virginia in the free enjoyment of the right secured by the Constitution and laws of the United States to have only the qualified Republican voters of West Virginia to vote for the nominees for said office and to vote for them but once in a certain primary election held in said State, by procuring certain unqualified voters to vote in said election and by procuring the repetition of a certain number of said votes, in violation of section 19 of the Criminal Code.

No. 776 was an indictment charging defendants with a conspiracy to defraud the United States by procuring in said primary election the unqualified votes mentioned in the indictment in No. 775 and by procuring the repetition of a certain number of said votes, thereby defrauding the United States of its governmental right to have nominated as candidates of the Republican and Democratic parties for the office of United States Senator from said State the true choice and preference of the voters in said primary election, and to have one of said candidates lawfully elected to the Senate of the United States and given the salary attaching to said office, in violation of section 37 of the Criminal Code.

Demurrers to the indictments were sustained on the ground *inter alia* that the right of an elector or citizen to vote for a candidate for the United States Senate derived from the Constitution does

not obtain in a State primary election where candidates for the office are chosen, and the protection of such right is confined only to the general election at which one of the candidates is to be elected.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

NOVEMBER, 1916.

○

Office Supreme Court, U. S.

FILED

FEB 28 1917

JAMES D. MAHER

CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

Nos. 775 and 776.

THE UNITED STATES, Plaintiff in Error,
VS.

EDWARD O'TOOLE, GUY C. MACE, JOHN M.
TULLY ET AL., Defendants in Error.

THE UNITED STATES, Plaintiff in Error,
VS.

EDWARD O'TOOLE, GUY C. MACE, JOHN M.
TULLY ET AL., Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN
DISTRICT OF WEST VIRGINIA.

BRIEF FOR DEFENDANTS IN ERROR.

JOHN H. HOLT,
LUTHER C. ANDERSON,
Counsel for Defendants in Error.

February 26, 1917.

Supreme Court of the United States

JOHN H. HOLT

JOHN H. HOLT

THE UNITED STATES OF AMERICA

AND OTHERS
VS

THE UNITED STATES OF AMERICA

VS

JOHN H. HOLT
VS

JOHN H. HOLT
VS

JOHN H. HOLT

JOHN H. HOLT

JOHN H. HOLT

JOHN H. HOLT

JOHN H. HOLT

INDEX.

No. 776.

	Page.
STATEMENT OF FACTS.....	1
Indictment based on section 19 of Criminal Code.....	2
Grounds of demurrer.....	3
Demurrer sustained	4
ARGUMENT	4
The particular right asserted.....	5
Rights secured to citizens by State and Federal governments respectively	6
There is a citizenship of a State and also of the United States.	6
The term "citizen," as used in section 19 of the Criminal Code, includes all persons born or naturalized in the United States, and the rights secured are such rights as are common to all persons by virtue of their citizenship.....	9
Rights of citizens of the United States.....	10
Rights of citizens of the State.....	11
Only legal rights judicially enforceable.....	13
Federal rights must be granted by Constitution.....	13
Congress must legislate before a constitutional right of a citi- zen can be judicially enforced.....	14
The United States does not possess any enforceable right in re- spect to the election of United States Senators by virtue of the Federal Constitution alone, but the right of the United States to control elections in the State is dependent wholly upon the acts of Congress.....	16
Congress has not acted, in so far as the West Virginia primary election of June 6, 1916, is concerned.....	16
Federal constitutional provisions as to the election of Senators.	16
Federal statutes as to the election of Senators.....	17
West Virginia constitutional provisions as to elections.....	19
West Virginia election statutes.....	19
State control of elections.....	19
The regulation of elections for the Federal Government left to the State in the first instance.....	22
Federal policy one of non-interference as to elections.....	23
Right to vote not a natural, but a granted, right.....	24
Right to vote derived from State.....	24

	Page
United States does not have any voters of its own.....	25
Right to vote not a necessary attribute to Federal citizenship.....	25
Citizenship not a condition precedent to the right to vote.....	25
The adoption of the Fourteenth Amendment did not add to the privileges and immunities of citizens of the United States	26
Acts charged would not have constituted an offense, even at a general election	28
West Virginia primary election limited as to political parties participating	29
Citizens not permitted to vote at primary unless they swear allegiance to some party.....	30
Candidates for public office may be nominated otherwise than by direct primary.....	31
The right to be voted for in a West Virginia primary election for nomination for Senator not a right guaranteed under the Constitution or laws of the United States.....	32
A primary election is not an election within the meaning of the term as used in the Constitution and laws of the United States	32
Federal Corrupt Practices Act of 1911 does not give Federal control of election.....	37
Federal act of June 4, 1914, providing a temporary method for nominating candidates for Senator, did not apply to West Virginia on June 6, 1916.....	38
Primary method of nominating candidates a new one.....	40
Indictment without precedent.....	41
The sustaining of the demurrer supported by precedent.....	44
Courts may not regulate primaries because of their importance. The Government enjoys the right to have elections pure and untainted by fraud.....	46
What Government control of primary elections would mean...	47

No. 775.

STATEMENT OF FACTS.....	48
Indictment based on section 37 of Criminal Code.....	49
Grounds of demurrer.....	50
Demurrer sustained	50
ARGUMENT	51
Primary election not a condition precedent to or a necessary part of an election.....	51
Authorities relied upon by Government have no application...	52
CONCLUSION	53
Demurrer properly sustained.....	53

INDEX.

iii

CITATIONS.

CONSTITUTIONAL PROVISIONS.

Federal:	Page
Section 4, Article 1.....	16
Section 5, Article 1.....	17
Seventeenth Amendment.....	17
West Virginia:	
Article 4, Section 11.....	19

STATUTES.

Federal:	
Section 19, Criminal Code.....	2
Section 37, Criminal Code.....	49
West Virginia:	
Acts West Virginia Legislature, 1915, page 225.....	19
Acts West Virginia Legislature, ch. 3, sec. 26a.....	20
Acts West Virginia Legislature, 1915, ch. 26, sec. 25.....	21
Acts West Virginia Legislature, 1915, ch. 26, sec. 1, clause 2	29
Acts West Virginia Legislature, 1915, ch. 26, sec. 13, clause 1	31
Acts West Virginia Legislature, 1915, ch. 26, sec. 23, clause 2	31

CASES CITED:

Anthony <i>vs.</i> Burrow, 129 Fed., 783.....	37
Brown <i>vs.</i> Smallwood (Minn.), 153 N. W., 953.....	33
Corfield <i>vs.</i> Coryell, 4 Wash., 371.....	11
Carem <i>vs.</i> United States, 121 Fed., 250.....	26
<i>Ex parte</i> Yarborough, 110 U. S., 651.....	41
<i>Ex parte</i> Siebold, 101 U. S., 371.....	38
<i>Ex parte</i> Commonwealth of Virginia, 100 U. S., 339.....	7
Elliott <i>vs.</i> Thompson (unreported): printed with Govern- ment brief.....	32, 33, 34, 35, 44
Gray <i>vs.</i> Seitz, 162 Ind., 1.....	33
Guinn <i>vs.</i> United States, 238 U. S., 354.....	27
Hodges <i>vs.</i> United States, 203 U. S., 15.....	12
Ledgerwood <i>vs.</i> Pitts, 122 Tenn., 570.....	32
Minor <i>vs.</i> Happersett, 21 Wall., 178.....	10, 25, 26
Montgomery <i>vs.</i> Chelf, 118 Ky., 766.....	33
Slaughter-house cases, 16 Wallace, 36.....	7, 9, 11, 12
State <i>ex rel.</i> Taylor, 220 Mo., 619.....	32
State <i>vs.</i> Nichols, 50 Wash., 506.....	32
State <i>vs.</i> Johnson, 87 Minn., 152.....	33

	Page
State <i>vs.</i> Erickson, 119 Minn., 152.....	33
United States <i>vs.</i> Aczel, 219 Fed., 917.....	41, 42
United States <i>vs.</i> Cruikshank, 92 U. S., 542.....	6, 7, 14, 24
United States <i>vs.</i> Hudson, 7 Cranch, 32.....	14
United States <i>vs.</i> Kettel, 211 U. S., 370.....	52
United States <i>vs.</i> Morse, 161 Fed., 429.....	—
United States <i>vs.</i> Mosely, 238 U. S., 316.....	—
United States <i>vs.</i> O'Toole, 236 Fed., 63.....	—
United States <i>vs.</i> Patrick, 54 Fed., 339.....	13
United States <i>vs.</i> Reeves, 92 U. S., 214.....	14, 24
United States <i>vs.</i> Wiltberger, 5 Wheaton, 85.....	4
Wilson <i>vs.</i> Blackbird Creek Marsh Co., 2 Peters, 245.....	15

Supreme Court of the United States

OCTOBER TERM, 1916.

Nos. 775 and 776.

**THE UNITED STATES, Plaintiff in Error,
VS.**

**EDWARD O'TOOLE, GUY C. MACE, JOHN M.
TULLY ET AL., Defendants in Error.**

**THE UNITED STATES, Plaintiff in Error,
VS.**

**EDWARD O'TOOLE, GUY C. MACE, JOHN M.
TULLY ET AL., Defendants in Error.**

**IN ERROR TO THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN
DISTRICT OF WEST VIRGINIA.**

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF CASE.

NO. 776.

**At a general primary election held in the State
of West Virginia on the 6th day of June, 1916, under**

her primary law of February 20, 1915, for the nomination of candidates for office to be voted for at the general election to be held on November 7, 1916, Albert B. White, Howard Sutherland, Ben. L. Rosenbloom and William F. Hite were opposing candidates for the nomination of the Republican party to the office of United States Senator from the State of West Virginia. The defendants, Edward O'Toole and twenty others, were supposed to be favorable to the candidacy of Hite, and were charged with having colonized and repeated voters in the interest of his candidacy, and were finally indicted in the United States District Court for the Southern District of West Virginia with having conspired to injure and oppress said White, Sutherland, and Rosenbloom in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States.

The indictment was based upon Section 19 of the Federal Criminal Code, which, in so far as its verbiage is applicable to the case in hand, reads as follows:

"Sec. 19. If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, * * * * * they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit or trust created by the Constitution or laws of the United States."

The defendants appeared and demurred to the indictment upon the following, among other, grounds:

"1. The election alleged in the indictment was not an election for a United States Senator or other officer, but was solely a primary election to nominate candidates for office, and was created and governed wholly by the laws of the State of West Virginia, and any and all rights at or in said election were derived under the laws of said State, and not in any manner under the Constitution or laws of the United States, and the matters and things alleged in the indictment, or any of them, did not, and do not, constitute an interference with any right or privilege secured to the said Albert B. White, Howard Sutherland and Ben L. Rosenbloom, or either of them, by the Constitution or laws of the United States; but their said rights and privileges, and the rights and privileges of each of them, as candidates in the primary election for the nomination to the office of United States Senator from the State of West Virginia, were guaranteed to them by, and are exclusively dependent upon, the laws of said State, and said indictment does not allege any offense of which this Court has or can take jurisdiction.

2. Because Section 19 of the Criminal Code relates solely to conspiracies against the exercise or enjoyment of personal and individual rights and privileges secured to citizens under the Constitution and laws of the United States, and the alleged rights and privileges in said indictment set forth as se-

cured to Albert B. White, Howard Sutherland and Ben. L. Rosenbloom do not constitute rights or privileges so secured.

3. Because the matters and things alleged therein do not constitute any offense against the laws or sovereignty of the United States."

The demurrer was heard before and sustained by Circuit Judge Woods in a written opinion, which, by order of Court, is made a part of the record (pages 8-11), and is reported in 236 Fed., 63. Final judgment for the defendants was entered upon the demurrer, and the Government prosecutes the present writ of error thereto.

ARGUMENT.

This indictment is based on Section 19 of the Federal Criminal Code, which is a highly penal statute, and is subject, therefore, to strict construction.

United States v. Wiltberger, 5 Wheaton, 85.

The specific thing complained of in this indictment is an alleged conspiracy on the part of the defendants to deprive certain citizens of the State of West Virginia and of the United States of the free exercise and enjoyment of certain rights and privileges guaranteed and secured to them under the Constitution and laws of the United States.

The basis of the indictment is the allegation that the defendants conspired to injure and oppress Albert B. White, Howard Sutherland and Ben L. Rosenbloom, citizens of the State of West Virginia,

and of the United States, in the free exercise and enjoyment of certain rights secured to them and each of them by the Constitution and laws of the United States, to wit:—the free exercise and enjoyment of the right and privilege of having only the duly qualified Republican voters of the said State of West Virginia vote for some one of said Republican candidates at said primary election, the right and privilege of having each Republican voter vote once only for some one of said candidates, and the right and privilege of having no votes cast, counted, certified and returned at said election for any candidate for the nomination of said office, except such as were the votes of the Republican voters, duly qualified under the laws of the said State; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

The particular right asserted and relied on by the Government is that citizens of the United States are protected by the Constitution and laws of the United States in the exercise and enjoyment of rights and privileges created and conferred on duly qualified members of certain political parties by the laws of the State of West Virginia for the selection of candidates of such political parties for the office of United States Senator to be voted for at a subsequent election.

In order to determine as to the correctness of the ruling of the lower court in sustaining the demurrer to the indictment, it will be necessary to consider citizenship under our dual form of government, and to determine the rights of citizens of the State of West Virginia and of citizens of the United

States, respectively, arising out of and by virtue of the fact that they are citizens both of the State and of the United States; what are the kinds and character of the rights secured to such citizens by the State and Federal Governments, respectively; by what authority are such rights secured and protected; in which government, State or Federal, do the rights of citizens pertaining to the elective franchise originate, and by what authority are they protected and enforced; all with reference to the Constitution and laws of the United States and the Constitution and laws of the State of West Virginia, and with special reference to the basis and origin of the elective franchise of citizens and of its governmental assurance and protection.

STATE AND FEDERAL GOVERNMENTS.

The people of the United States, resident within any State, are subject to two governments, one State and the other National, established for different purposes, possessed of different powers, exercising separate jurisdictions, each supreme in its own particular sphere, and together forming one complete government for the protection of all citizens of both.

United States v. Cruikshank, 92 U. S., 542.

CITIZENSHIP.

There is a citizenship of the United States and also a citizenship of the respective States, and the same person may be, at the same time, a citizen of both. He has certain rights, both as a citizen of the

State and as a citizen of the United States, but the rights secured to him by the State are different from those secured by the United States. For the protection of his rights, he must look to that government from which the particular right of which he may be deprived is derived.

Slaughter House Cases, 16 Wall., 74.
United States v. Cruikshank, 92 U. S., 542.

The Fourteenth Amendment to the Constitution of the United States recognized, if it did not create, a National citizenship, as distinguished from that of the States. See dissenting opinion of Mr. Justice Field in *Ex Parte Commonwealth of Virginia*, 100 U. S., 339.

In order to remove any uncertainty that had always existed as to whether there is a citizenship of the United States, and in order to define that citizenship, as well as to declare what constitutes citizenship of a State, Clause 1 of Section 1 of the Fourteenth Amendment provides:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside".

In considering this clause of the Amendment, Mr. Justice Miller, in the majority opinion in the *Slaughter House Cases*, 16 Wall., 36, says:

"The distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not

only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it, but it is only necessary that he be born or naturalized in the United States to be a citizen of the Union.

It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

We think this distinction and its explicit recognition in this Amendment of great weight in this argument, because the next paragraph of the same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs, rests wholly on the assumption that the citizenship is the same and the privileges and immunities guaranteed by the clause are the same.

Of the privileges and immunities of the citizens of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the Amendment.

If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such, the latter must rest for their security and protection where they have heretofore rested; for they are not embraced by this paragraph of the Amendment".

We respectfully submit that the term "citizen", as used in the Constitution and laws of the United States and in Section 19 of the Criminal Code, includes all persons born or naturalized in the United States, men, women and children, and means membership in the body of people composing this Nation, and nothing more.

Just as this Court has said that the distinction between a citizen of a State and a citizen of the United States was important in the *Slaughter House Cases*, so, we submit, the distinction here is important, on account of the fact that in the brief filed on behalf of the Government, it is argued that the offense alleged against the defendants is an interference with the rights of citizens of the United States in respect to a right secured to them as citizens of the United States.

On behalf of the defendants, we respectfully submit that Section 19 of the Criminal Code protects only citizens of the United States as such, and as to rights exclusively guaranteed to them under the Constitution and laws of the United States; that the statute does not apply to offenses such as are alleged in the indictment, for the reason that whatever rights the candidates for the nomination for the of-

fice of Senator in the Congress of the United States from the State of West Virginia had in the primary election held in the State of West Virginia on the 6th day of June, 1916, were derived solely from the State of West Virginia, and accrued to them under and by virtue of the fact that they were citizens of the State of West Virginia, as distinguished from citizens of the United States, and that the offenses as charged, if any such were committed, were offenses against the State of West Virginia and its citizens, and not against the United States, as a sovereign government, or against any right of its citizens guaranteed to them under its Constitution and laws.

Minor v. Happersett, 88 U. S., 162; 21 Wall., 178.

RIGHTS OF CITIZENS OF THE UNITED STATES.

What is the character of the rights and privileges of citizens of the United States, guaranteed to them by the Constitution and laws of the United States?

The rights and privileges secured to citizens by the Constitution of the United States are the rights and privileges, and only such rights and privileges, as are common to all persons as members of society constituting the great body of citizens of the United States. They are designated "civil rights", as distinguished from "political rights".

Minor v. Happersett, 88 U. S., 162; 21 Wall., 178.

Such civil rights are absolute and personal. They can never be withheld, under the Constitution of the United States, and may always be judicially enforced. They are the fundamental rights which belong to the citizens of every free government, subject only to such just restrictions as may be prescribed for the general good.

Slaughter House Cases, 16 Wall., 36.

RIGHTS OF CITIZENS OF A STATE.

While the individual rights secured to the citizens of the United States are of vast importance, they are comparatively few, and the greater part of the citizenship rights which an individual enjoys have their origin in the State, and are guaranteed and secured to him by the State governments, to which governments the individual citizen must look for the enforcement thereof.

The character of these State secured citizenship rights have been the frequent subject of judicial determination.

In speaking of the rights and immunities of the citizens of the several States, Mr. Justice Washington, in *Corfield v. Coryell*, 4 Wash. (C. C.), 371, Fed. Case No. 3230, says:

"The inquiry is: What are the privileges and immunities of the citizens of the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all

free governments, and which have at all times been enjoyed by citizens of the several states which compose this union, from the time of their becoming free, independent and sovereign. What these fundamental principles are it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

Quoted with approval in *Hodges v. United States*, 203 U. S., 15, 51 L. Ed., 68.

This Court has said in the *Slaughter House Cases*, 16 Wall., 36, 76, 21 L. Ed., 394-408, that:

"It would be the vainest show of learning to attempt to prove by citations of authority that up to the adoption of the recent Amendments, no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the States—such, for instance, as the prohibition against *ex post facto* laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal Government".

ONLY LEGAL RIGHTS CAN BE JUDICIALLY ENFORCED.

In order to support a conviction, the right thus asserted must necessarily be a legal right, as distinguished from a moral obligation, for only legal rights can be enforced under the Constitution and laws of the United States.

In the case of *United States v. Patrick*, 54 Fed., 339, at page 348, the court, in speaking of the meaning of the word "right", as used in section 5508, now Section 19 of the Criminal Code, says:

"The words 'rights' or 'privileges' have, of course, a variety of meanings, according to the connection or context in which they are used. Their definition, as given by standard lexicographers, include 'legal power', 'authority', 'immunity granted by authority', 'investiture with special or particular rights'. In this enlarged sense they are used in Sec. 5508 with the qualification that the right or privilege must be one derived from or secured by the Constitution or laws of the United States to the citizens engaged in its exercise or enjoyment".

FEDERAL RIGHTS MUST BE GRANTED BY CONSTITUTION.

Furthermore, this right must be such as is expressly or by necessary implication granted to a citizen by the Constitution of the United States, for no citizen enjoys any right within the protective power of Congress except such as have been expressly guar-

anteed to him by the Federal Constitution, all rights not so granted being secured to him by the State, and the power to protect such rights being vested in the State exclusively.

United States v. Cruikshank, 92 U. S., 542.

CONGRESS MUST LEGISLATE.

Congress must first act before a constitutional right of a citizen can be judicially recognized and enforced. This is so for the reason that the United States has no common law.

United States v. Worrall, 2 Dallas, 385;
Wheaton v. Peters, 8 Peters, 591;
United States v. Reeves, 92 U. S., 218;
United States v. Eaton, 144 U. S., 677.

"The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense."

"If Congress has not declared an act done within a State to be a crime against the United States, the courts have no power to treat it as such."

United States v. Hudson, 7 Cranch., 82.

Section 5508 was invoked and relied upon in the case of *United States v. Waddell*, 112 U. S., 76, which was a case arising under Section 3 of Article 4 of the Constitution, which provides that:

"Congress shall have power to make all needful rules and regulations respecting the territory and property of the United States."

The indictment in that case alleged that the defendants had conspired to defraud a citizen of the United States of his rights in regard to public lands. In sustaining the demurrer to the indictment, the Court said:

"The right assailed, obstructed, and its exercise prevented, or attempted to be prevented, as set out in this petition, is very clearly a right wholly dependent upon the Act of Congress concerning the settlement and sale of the public lands of the United States. No such right exists or can exist outside of an act of Congress."

This principle has been applied in the following cases:

Wilson v. Blackbird Creek Marsh Co., 2 Peters, 245;

Cooley v. Board of Wardens, 12 How., 299;

State of Pennsylvania v. Wheeling Bridge Company, 18 How., 518;

Manchester v. Commonwealth of Massachusetts, 139 U. S., 240.

The controlling principle in all of these cases is that notwithstanding the fact that the United States had rights in the subject matter, with full authority to assert the same, still it could not do so because Congress had not conferred such authority upon the Federal Courts.

We, therefore, conclude that the United States does not possess any enforceable rights in respect to the election of a United States Senator, or, indeed, as to the conduct of elections in any respect, by virtue of the Federal Constitution itself, but the right of the United States to control elections in a State is dependent wholly upon the acts of Congress under the Constitution.

And Congress has not acted so far as this case is concerned, because the primary complained of was held under the West Virginia Act, and, at that time (June 6, 1916), the Act of Congress of June 4, 1914, had ceased, by its own terms, to be operative in the State of West Virginia.

This leads us to a consideration of the Constitution and laws of the United States, and of the State of West Virginia, in respect to the elective franchise, and particularly in regard to the nomination and election of United States Senators, with a view of finding out, if possible, whether the Federal Courts have jurisdiction to punish for the offenses alleged in this indictment.

FEDERAL CONSTITUTIONAL PROVISIONS AS TO THE ELECTION OF SENATORS.

"The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations except as to the places of choosing senators".—Section 4, Article 1, of the Constitution of the United States.

"Each House shall be the judge of the election, returns and qualifications of its own members".—Section 5, Article 1 of the Constitution of the United States.

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors for the most numerous branch of the state legislatures. When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution".—Seventeenth Amendment to the Constitution of the United States.

FEDERAL STATUTES AS TO THE ELECTION OF SENATORS.

Following the adoption of the Seventeenth Amendment to the Constitution of the United States, Congress on June 4th, 1914, passed "An Act Providing a Temporary Method of Conducting the nomination and election of United States Senators", as follows:

"Sec. 1. That at the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative in Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the fourth day of March next thereafter.

Section 2. That in any State wherein a United States Senator is hereafter to be elected either at a general election or at any special election called by the executive authority thereof to fill a vacancy, until or unless otherwise specially provided by the legislature thereof, the nomination of candidates for such office not heretofore made shall be made, the election to fill the same conducted, and the result thereof determined, as near as may be, in accordance with the laws of such State regulating the nomination of candidates for and election of Members at Large of the National House of Representatives: Provided, That in case no provision is made in any State for the nomination or election of Representatives at Large, the procedure shall be in accordance with the laws of such State respecting the ordinary executive and administrative officers thereof who are elected by the vote of the people of the entire State: And provided further, That in any case the candidate for Senator receiving the highest number of votes shall be deemed elected.

Sec. 3. That section two of this Act shall expire by limitation at the end of three years from the date of its approval."

WEST VIRGINIA CONSTITUTIONAL PROVISIONS AS TO ELECTIONS.

"The Legislature shall prescribe the manner of conducting and making returns of elections, and of determining contested elections; and shall pass such laws as may be necessary and proper to prevent intimidation, disorder or violence at the polls, and corruption or fraud in voting, counting the vote, ascertaining or declaring the result, or fraud in any manner, upon the ballot".—Article 4, Section 11, Constitution of West Virginia.

WEST VIRGINIA ELECTION STATUTES.

Pursuant to the foregoing provision of the Constitution of the State of West Virginia, the Legislature thereof has from time to time enacted numerous statutes in regard to the conduct of elections, and prescribing penalties for offenses thereagainst.

At the time of the enactment by Congress of the statute of June 4th, 1914, West Virginia did not have any statute providing for the election of Congressmen at large, but a method was provided for the nomination of candidates for the office of Senator in the Congress of the United States by "An Act providing for the nomination of candidates for public office, including United States Senators", etc., passed February 20, 1915, approved by the Governor on March 4, 1915, and in effect ninety days from its passage, by which it was provided:

"All candidates of political parties to be voted for by the people (except candidates

for judges of the supreme court of appeals, candidates for judge of the circuit court, and candidates for judge of the criminal or intermediate court, and such candidates as are to be voted for at special election to fill vacancies, presidential candidates and electors, and candidates for offices to be filled by cities, towns or villages of less than five thousand inhabitants) shall be nominated at a direct primary election, held in accordance with this act".

W. Va. Acts 1915, p. 225.

This primary election law adopted all provisions of Chapters 3 and 5 of the Code of West Virginia, being said chapters governing "Elections" and "Corrupt Practices", respectively, in so far as the same are not in conflict with and are not modified by the primary election law, as appears from Section 26a-(24) of Chapter 3, of the Code of West Virginia, as follows:

"All provisions of chapters three and five of the Code of West Virginia, so far as the same are not in conflict with and are not modified by this Act, shall, so far as they are germane, apply to and are hereby made applicable to the primary elections".

Notwithstanding the provisions above quoted in regard to offenses in elections and providing for the punishment of corrupt practices, the Legislature adopted as a part of the primary election law itself a section dealing with offenses in primary elections, which reads as follows:

"Any primary election officer, members of any political committee or other person, who shall wilfully fail and neglect to perform any duty by this act required of him, or who shall tamper with, change or destroy any ballot, return or certificate of election, or delay the return of ballot boxes, ballots and other election returns to the county clerk, or wilfully do any other act, the object of which is to destroy any ballot, or the record of any canvass of votes, or in any way wilfully interfere with the utmost honesty and fairness in conducting any such primary election, or in making nominations thereat, and any voter who shall cast more than one primary election ballot on the same day, or who shall vote under a name other than that by which he is generally known, who shall make any false oath, affirmation or affidavit respecting the right of himself or any other person to vote, shall be guilty of a felony, and upon conviction thereof, shall be confined in the penitentiary not less than one year or more than three years."

W. Va. Acts, 1915, Chap. 26, Sec. 25.

STATE CONTROL OF ELECTIONS.

From a consideration of the Federal Constitutional provisions in regard to the election of Representatives and Senators it appears that the framers of the Constitution of the United States provided for State regulation of elections, subject to the ultimate control of the Federal Government, wherever federal rights are involved. Consequently, elections were left to the control of the State governments "as being best acquainted with the situation of the peo-

ple, subject to the control of the general government, in order to enable it to produce uniformity and prevent its own dissolution." Madison, Argument before Virginia Convention, 3 Ferrand's Records of the Federal Conventions, pages 311-312.

Alexander Hamilton, writing in the "Federalist" concerning elections, said:

"It will not be alleged that an election law could have been framed and inserted in the constitution which would have been applicable to every probable change in the situation of the country; and it will, therefore, not be denied that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded that there were only three ways in which this power could have been reasonably organized; that it must either have been lodged wholly in the national legislature, or wholly in the state legislatures, or primarily in the latter, and ultimately in the former. The last mode has with reason been preferred by the convention. They have submitted the regulation of elections for the federal government, in the first instance, to the local administrations; which in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety".—"Federalist", Essay No. LIX, page 320.

FEDERAL POLICY ONE OF NON-INTERFERENCE AS TO ELECTIONS.

It is interesting to recall that notwithstanding the fact that Congress had full power under the Constitution to legislate in regard to Congressional elections, it was not until the year 1842 that any law was passed on this subject, at which time it was provided that representatives should be elected by Districts, and, subsequently, it was provided that all elections for representatives should be held on the same day.

Following the Civil War and the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution, and for the purpose of governing the conditions arising on account thereof, Congress dealt fully and explicitly with the subject of the elective franchise by the Act of May 31st, 1870. The statutes then enacted appear as Chapter 7 of the Revised Statutes, which is headed: "Crimes against the Elective Franchise and Civil Rights of Citizens". Ten of the sections dealt explicitly with elections, all of which were expressly repealed by the Act of February 8th, 1894. Section 5508, now Section 19 of the Criminal Code, was not repealed, and the defendants in the case at bar are charged with a violation thereof.

In 1910 Congress passed a "Corrupt Practices Act".

Following the adoption of the Seventeenth Amendment to the Constitution of the United States, Congress, on June 4th, 1914, passed "An Act Providing a temporary method of conducting the nominations and elections of United States Senators".

This is the last Federal enactment in regard to

the selection of United States Senators, and this Act was temporary, and, by its own terms, had ceased to be operative in the State of West Virginia at the date of the primary complained of.

Such is the brief record of Federal legislation as to elections, and it shows a policy of practical non-interference on the part of the United States with State control.

JUDICIAL INTERPRETATION.

With the constitutional provisions and the statutes before us, we are now in position to examine their interpretation and application by the courts as respects the matter in hand.

RIGHT TO VOTE NOT A NATURAL BUT A GRANTED RIGHT.

The right of a citizen to vote is not a natural right, but is one that is bestowed upon the citizen by some constituted authority.

RIGHT TO VOTE DERIVED FROM STATE.

The right to vote is a privilege derived from the State and not from the Federal Government.

United States v. Reeves, 92 U. S., 214, 23 L. Ed., 563;

United States v. Cruikshank, 92 U. S., 542; 23 L. Ed., 588.

THE UNITED STATES DOES NOT HAVE ANY VOTERS OF ITS OWN.

The Constitution of the United States does not confer the right of suffrage upon any one, nor does the United States have any voters of its own creation in the States.

Minor v. Happersett, 21 Wall., 178.

The right of suffrage is not even a necessary attribute of Federal citizenship.

United States v. Cruikshank, *supra*.

VOTERS NEED NOT BE CITIZENS OF UNITED STATES.

On the other hand, it is not necessary that the voters under State laws, even at elections for Presidential electors and members of Congress, shall be citizens of the United States. Under certain prescribed conditions, citizens of the State, but not of the United States, may vote for State and Federal officers in Missouri, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Minnesota, and Texas, and, perhaps, in other States.

Minor v. Happersett, 88 U. S., 162.

In *Minor v. Happersett*, *supra*, Chief Justice Waite says:

"Certainly, if the courts can consider any question settled, this is one. For nearly

ninety years the people have acted upon the idea that the Constitution when it conferred citizenship, did not necessarily confer the right of suffrage. If uniform practice, long continued, can settle the construction of so important an instrument as the Constitution of the United States confessedly is, most certainly it has been done here".

EFFECT OF FOURTEENTH AND FIFTEENTH AMENDMENTS ON ELECTIVE FRANCHISE.

The adoption of the Fourteenth Amendment did not add to the privileges and immunities of citizens of the United States.

Minor v. Happersett, supra.

Neither does the Fifteenth Amendment to the Constitution confer any additional rights upon the individual citizen in the exercise of the elective franchise. The inhibition contained in the Fifteenth Amendment is upon the States and not upon the individual, and the power of the Federal Government under said amendment is limited to the enactment of laws to prevent the right of a citizen of the United States to vote to be denied or abridged on account of race, color or condition.

Carem v. United States, 121 Fed., 250.

True, the exercise of the authority thus conferred by the Fifteenth Amendment upon the Federal Government may result in securing to persons

of African descent the right to vote, but this is not because the right to vote was conferred primarily by the Federal Constitution but because the right may be incidentally secured to the individual of African descent on account of the enforcement by the Federal Government of the inhibition upon the States.

In *Guinn v. United States*, 238 U. S., 354, 59 L. Ed., 347, Chief Justice White, in speaking of the respective rights of the State and Federal Governments since the adoption of the Fifteenth Amendment, says:

"Beyond doubt the Amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning, and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support, and both the authority of the nation and the state would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the state, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals * *

* * But while this is true, it is true also that the amendment does not change, modify, or deprive the states of their full power as to suffrage except, of course, as to the subject with which the amendment deals and to the extent that obedience to its command is necessary. Thus the authority over suffrage which the states possess and the limitation which the Amendment imposes

are co-ordinate and one may not destroy the other without bringing about the destruction of both".

ACTS CHARGED WOULD NOT HAVE CONSTITUTED AN OFFENSE EVEN AT A GENERAL ELECTION.

We therefore conclude, from a consideration of the foregoing authorities, that even though the offenses charged had been committed at a general election at which a Senator in the Congress of the United States was chosen, such acts would not have constituted an offense against the Federal law such as gives to United States courts jurisdiction to enforce the pains and penalties, and the demurrer would have been properly sustained under the circumstances just stated. But the facts just supposed are not the facts in this case. The offenses charged were not committed at a general election where a Senator of the United States was actually chosen, but at a West Virginia state primary election.

We will, therefore, in the next place call the Court's attention to the West Virginia primary law for the purpose of finding out, if possible, what it is, what is its origin and purpose, by what authority established, to what and to whom does it apply, and what are the results accomplished by it, all for the purpose of finding out whether the rights secured to citizens of the State of West Virginia, and of the United States under this law are such rights as are guaranteed to them under the Constitution and laws of the United States.

THE WEST VIRGINIA PRIMARY ELECTION LAW.

The West Virginia Primary Election Law, enacted as recently as 1915, is a mere nominating device for determining party candidates to be subsequently voted for at a general election. It does not give an opportunity for all political parties in the State to participate therein, does not extend to all citizens duly qualified to exercise the elective franchise an opportunity to vote thereat, and is not the sole and exclusive method by which candidates for public office may have their names placed on the ballot to be voted for at a general election.

The following is the provision of the statute in respect to the political parties which may participate:

"A political party shall be taken to be an affiliation of electors representing a political party or organization which, at the last preceding general election, polled for its candidates for representative in Congress in the several districts at least five per cent of the vote cast for that office in the State".—Chapter 26, Acts West Virginia Legislature, Session 1915, Section 1, Clause 2.

The effect of this provision at the State-wide primary held on June 6th, 1916, was to limit the class of citizens participating in said election to members of the Republican and Democratic parties, to the exclusion of all other political parties. Among the parties so excluded were the Prohibition Party, the Socialist Party, and perhaps others.

Not only are members of political parties prevented from participating in the primary election, but those citizens of the United States who are legally qualified voters under the laws of the United States who do not affiliate with any political party and refuse to swear allegiance to any party, are prohibited from voting at the primary election. Every voter, before casting his ballot, is required by oath or affirmation, to declare that he is a regular and qualified member and voter of a party, as appears from the following:

"On entering the election room, the voter shall announce his name, and if he is duly registered, or has obtained transfer, as provided by law, he shall sign his name and place of residence in a book of the party whose ballot he wishes to cast, which book shall be paged alphabetically, and have at the top of the page thereof in form and effect the following oath or affirmation with blank spaces properly filled in as to the party and precinct as indicated: "The undersigned do each for himself severally swear or affirm that I am a regular and qualified member and voter of the _____ party, and am a duly qualified resident and voter in precinct No. _____, _____ District, _____ County, West Virginia, and reside at the place designated opposite my name signed hereunder; that the one ballot which I am about to cast will be the only primary election ballot cast this day by me; that I have neither received, nor do I expect to receive, anything of value for myself or another, given or promised with the manifest intent to influence my vote or

the vote of another or others at this time' ".
Chapter 26, Acts West Virginia Legislature,
Session 1915, Section 13, Clause 1.

Furthermore, the primary method of making nominations in West Virginia is not the sole and only method by which a candidate may have his name placed on the ballot. The primary election law makes provision for names being placed on the ballot by petition signed by five per cent. of the qualified voters resident within the political division for which a candidate is presented.

"Candidates for public office may be nominated otherwise than by direct primary election. In such case, a certificate shall be signed by voters resident within the state, district, or political division for which the candidate is presented, to a number equal to five per cent. of the entire vote cast at the last preceding election in the state, circuit, district, county or other division for which the nomination is made. No voter signing such certificate shall be counted unless his residence and postoffice address be designated. Such certificates shall state the name and residence of each of such candidates; that he is legally qualified to hold such office; that the subscribers desire and are legally qualified to vote for such candidates; and may designate, by not more than five words, a brief name of the party or principle which said candidates represent. No person shall be legally qualified to sign such a certificate who participated in a direct primary election held in accordance with this act. Every person not legally qualified to sign such a certificate and who subscribes

his name to the same shall be guilty of a misdemeanor and fined not less than ten dollars nor more than fifty dollars, and a justice of the peace shall have jurisdiction in such case". Chapter 26, Acts West Virginia Legislature, Session 1915, Section 23, Clause 2.

THE RIGHT TO BE VOTED FOR AT A WEST VIRGINIA PRIMARY ELECTION FOR PARTY NOMINATION FOR SENATOR IN THE CONGRESS OF THE UNITED STATES IS NOT A RIGHT GUARANTEED UNDER THE CONSTITUTION OR LAWS OF THE UNITED STATES.

A State primary election is not such an election as is referred to in the Constitution and laws of the United States in respect to the election of United States Senators, and is not within the meaning of the term "election", as used in the Federal Constitution and in the Acts of Congress. *Elliott v. Thompson et al.*, United States District Court for the Western Division of the Western District of Missouri, at Kansas City, W. F. Booth, Judge, opinion filed, but not officially reported. Printed as Appendix to Brief for the United States filed herein.

The great weight of authority in the decisions of the State courts is that a primary election is not an election within the meaning of the term as used in the State laws and Constitutions.

State ex rel. Taylor, 220 Mo., 619;
State v. Nichols, 50 Wash., 508;
Ledgerwood v. Pitts, 122 Tenn., 570;

State v. Johnson, 87 Minn., 152;
State v. Erickson, 119 Minn., 152;
Brown v. Smallwood, (Minn.) 153 N.
 W., 953;
Montgomery v. Chelf, 118 Ky., 766;
Gray v. Seitz, 162 Ind., 1.

In the case of *State v. Erickson*, 119 Minn., 152,
 it is said:

"Our primary election, which is purely of statutory origin, is the selection, by qualified voters, of candidates for the respective offices to be filled, while an election, which has its origin in the Constitution, is the selection, by such voters, of officers to discharge the duties of the respective offices."

The Court, in the case of *State v. Johnson*, 87 Minn., 152, said:

"The primary election law simply adopts a general method by which all parties and organizations shall, in the interests of public order upon a certain day, within certain regulations meet, and select their various nominees to go upon the ballot for the ensuing election".

Judge Booth, in the case of *Elliott v. Thompson*, *supra*, says:

"The rights of candidates and voters at primary elections are widely different from the rights of candidates and voters at an election proper. Legislation on various points may be passed with reference to

rights and procedure under a primary election which would be unconstitutional if applied to an election proper. The right at a primary is not a right to vote to elect, but a right to vote to nominate. In other words, the primary is a mere nominating device".

The case of *Elliott v. Thompson, supra*, was an application by the plaintiff for a **dedimus potestatem** to take depositions as provided by Sec. 866, R. S. U. S.

The application was opposed on the grounds that the court did not have jurisdiction of the action and that the ground of complaint did not state a cause of action, and because the granting of it would be contrary to the provisions of the Constitution and statutes of the State of Missouri.

The action was brought by a citizen of the State of Missouri against certain defendants, also citizens of that State, for damages alleged to have been sustained by reason of a conspiracy on the part of all the defendants, and by reason, pursuant thereto, of the refusal by several of the defendants, acting as judges and clerks of a certain primary election held in the city of Kansas City, State of Missouri, on the 4th day of August, 1914, to count the vote of the plaintiff as cast by him for a member of Congress.

It was asserted that the Federal Court had jurisdiction on the ground that the action was one arising under the Constitution and laws of the United States, the complainant alleging, "that said defendants herein did procure and cause the plaintiff to be deprived of a right and privilege secured to him by the Constitution and laws of the United States of voting for a member of Congress for the fifth con-

gressional district".

In denying the application, Judge Booth said:

"The weakness of the plaintiff's contention lies in the assumption that a nominating convention or a primary election is a necessary step in the election of a representative in Congress. It is a very common step, and a convenient step, but not a necessary step.

A primary election not being a necessary step in the election of a representative in Congress, cannot be held to be included by fair implication in the meaning of the term 'election', as used in the Constitution of the United States touching the election of representatives in Congress.

Whether it might be desirable for Congress to fully recognize and adopt the States' primary elections and the laws relating thereto so far as they relate to the nominations of representatives in Congress, and to provide for the protection and enforcement of the rights of voters at such primary elections, is a question which the courts are not called upon to decide. It is sufficient to say that as yet Congress has not specifically done so, and in my opinion, it has not done so by implication.

Before the court can grant the present application of the plaintiff it must decide that it has jurisdiction of the case on the ground that the action is one arising under the Constitution or Laws of the United States. In my opinion, the action does not so arise, either directly, or by fair implication. Therefore, I am constrained to hold that this Court has not jurisdiction of the

action, and it necessarily follows that the present application must be denied."

The same reasoning which has led State courts almost universally to hold that State primaries are not elections within the meaning of the State constitutions, leads inevitably to the conclusion that a State primary election is not such an election as is contemplated by the Constitution of the United States when speaking of the election of United States Senators.

Furthermore, the right to be a candidate for Senator at a State primary election is not such a right as is guaranteed by the Constitution or laws of the United States, because a candidate is not deprived by any act in respect to a primary election of being a candidate before the people for the election to the office of United States Senator. We have found that the primary law of the State of West Virginia expressly provides a method by which citizens may become candidates for Senator, other than by means of entering a primary election for a nomination to that office. Consequently, if one is deprived of his right in the primary election on account of fraud, he still has his right to become a candidate before the people for the office of United States Senator.

And how can it be that depriving citizens of nominations at primary elections is any more in violation of the Constitution and laws of the United States when done by private individuals than it is when done by the State of West Virginia? It must be that the State has authority by virtue of its sover-

eignty to regulate and control exclusively primary elections.

FEDERAL CORRUPT PRACTICES ACT OF 1911.

It is submitted on behalf of the Government that Congress has adopted State laws in respect to primary elections for the reason that by the Act limiting the amount of campaign expenses in elections to offices of Representative and Senator in the Congress of the United States, passed August 19th, 1911, Chapter 32, United States Compiled Statutes, 1913, sec. 195, Congress recognized primary elections.

The recognition of primary elections under this Act was likewise extended in the same form to nominating conventions. Surely it cannot be successfully contended that by recognizing political nominating conventions for candidates for Congress, Congress ever intended to adopt, or did adopt, as a matter of fact, all state laws pertaining to nominating conventions. If it did not do so by virtue of the Act of August, 1911, neither did it do so as respects primary elections, for both conventions and primary elections stand on the same footing in so far as congressional recognition is concerned.

We respectfully submit that it takes something more than a mere reference in an Act of Congress to a State election in order to make the election laws of the State governing such elections the laws of the United States. That is going too far, we submit, and, furthermore, farther than any Federal Court has ever gone.

In the case of *Anthony v. Burrow*, 129 Fed., 783,

in referring to the *Yarborough* case and other cases to the same effect, Judge Pollock said:

"From this it will be seen the claim made by solicitors for complainant, that the above and kindred cases hold the election machinery employed by the state in the selection of candidates for the office of representative in Congress, becomes, when so employed, a part of the Federal law, and the construction of the same raises a Federal question, is claiming too much for such cases".

FEDERAL ACT OF JUNE 4TH, 1914.

It is argued on behalf of the Government that Congress, since the adoption of the Seventeenth Amendment to the Constitution of the United States, has adopted as its own the election laws of the State of West Virginia, including those State laws relating to the conduct of primaries, by the Act of June 4, 1914, Chapter 103, and has thus made the election laws of the State of West Virginia, in so far as they relate to the choosing of a United States Senator, Federal laws, under the authority of *In re Co*, 127 U. S., 731. *Ex Parte Siebold*, 101 U. S., 371; *Ex Parte Yarborough*, 110 U. S., 651.

At the time the statute of June 4th, 1914, was enacted, West Virginia did not have any laws regulating the nominations of candidates for the election as members at large of the National House of Representatives. Consequently, the Act, if it applied to West Virginia at all, fixed the method of choosing candidates for Senator the same as that for the sel-

ection of ordinary executive and administrative officers of the State, but, under the express terms of the Act, this method should continue only until otherwise specially provided by the State Legislature. The Act was a temporary one, passed to meet an emergency arising by reason of the fact that the States had had no opportunity to legislate in respect to the choosing of United States Senators by a direct vote of the people. This is indicated by the title, which designates it as providing a "temporary method", and also by Section 3 of the Act, which provides that it shall expire by limitation at the end of three years.

However, this condition did not long exist, for the Legislature of West Virginia acted promptly, and passed an act providing for the nomination of candidates for public office, including candidates for United States Senator; which act was passed February 20th, 1915, approved by the Governor March 4th, 1915, and in effect ninety days from passage.

It thus appears that, as far as West Virginia is concerned, the Federal Act of June 4th, 1914, ceased and no longer continued to apply after June, 1915. The State law automatically became the only statute on the subject of the nomination and election of United States Senators, and from thenceforth the Federal Act of June 4th, 1914, providing a temporary method for the nomination and election of United States Senators is without force and effect in the State of West Virginia.

We respectfully submit that the Federal Government, by the enactment of the Seventeenth Amendment to the Constitution of the United States, pro-

viding for the election of two United States Senators from each State by the people thereof, and by the subsequent enactment by Congress, on June 4th, 1914, of a temporary method of conducting the nomination and election of United States Senators, never intended to exercise direct authority and control over either the nomination or election of United States Senators except "until and unless otherwise specially provided by the Legislature thereof". When the Legislature of the State of West Virginia provided for the nomination and election of United States Senators, the statute of June 4th, 1914, ceased to apply to West Virginia by virtue of its own express provisions, just as effectively as the statute will cease of its own limitation to apply to any of the States after June 4th, 1917.

It should be noted that the method of selecting candidates at primary elections to be subsequently voted for at a general election is comparatively new in this country. The method is even now only slowly making its way against what was formerly the sole method of selecting candidates, namely, the party convention, or the party caucus. It is by no means a proved success, and has not won for itself permanent and universal popular favor. Signs point to its being supplanted by some other method just as it has now in some measure taken the place of party conventions for the nomination of candidates.

When the Constitution of the United States was adopted, the method of choosing candidates by means of primary elections was unheard of. The same was true even in 1870 when the statute relied on became a law. How then, can it be said that the Constitution, the basis for all election rights that can be suc-

cessfully asserted under Federal authority, secured the right of a candidate for nomination by the primary method, or that the statute invoked contemplated the protection of any such right? Surely it cannot be successfully contended that the framers of the Constitution, looking into the future a hundred years, or that the law-makers of 1870, contemplating the conditions that would arise in the early part of the twentieth century, foresaw that the method of nomination by primary election would come into vogue, and then and there guaranteed citizens of the United States certain rights in respect to such primary elections, and authorized the courts of the United States to administer punishment for conspiring to defraud citizens of their rights under said election laws, where the election of Federal officers is involved.

THE INDICTMENT IS WITHOUT PRECEDENT

The indictment in this case is without the support of judicial precedent. This is practically admitted, as we understand it, in the brief on behalf of the Government, at page 26.

This case does not fall within the principles of such cases as *Ex parte Yarborough*, 110 U. S., 651; *United States v. Mosely*, 238 U. S., 383; and *United States v. Aczel*, 210 Fed., 917.

In so far as the rights of the defendants in this case are concerned it may be conceded that every legal voter in the United States is protected by Federal authority in his right to cast his ballot at a regular election for the candidates of his choice; that the United States not only secures to him the right to

vote, without let or hindrance, but further, secures to him a fair and honest counting and certification of his ballot, as cast. But when that is done, the extreme limit of the exercise of Federal authority over elections, as determined in and by the courts of the United States under the Constitution and Congressional enactments has been reached. No court that has ever been called upon to interpret the Federal Constitution or Federal statutes in respect to elections has ever gone further than to recognize and uphold the right of every legal voter to vote and to have his ballot counted and returned as cast at all general elections where Federal officers are chosen.

But no such right of a citizen is involved in this case. No violation of any citizenship right is asserted. The indictment does not even deal with a general election. Its subject matter relates to a State primary election held exclusively under State laws, and for the sole purpose of securing to certain successful candidates in said primary the endorsement of a political party,—in this case, the endorsement of the Republican Party, of a candidate for the office of United States Senator to be voted for as a party candidate at a general election to be subsequently held.

In the *Aczel* case, *supra*, the District Court held that since the adoption of the Seventeenth Amendment to the Constitution of the United States, the right to vote for a United States Senator is a right secured by the Constitution and laws of the United States. This decision is based upon the fact that the Act of Congress of June 4th, 1914, adopted, for the election of Senators, the laws of the State of Indiana, which laws provide for election inspectors, judges

and pole clerks, and prescribe their duties, and, therefore, the State laws became, in effect, the Federal laws as to the election of United States Senators.

We have seen that the Act of June 4th, 1914, adopted, for the election of Senators, the laws of the several States only in cases where a State had not already legislated on the subject, and where there had not already been legislation, the State laws were adopted only until the Legislature of such State could act and adopt laws of its own for the election of United States Senators.

We have further seen that the Legislature of West Virginia adopted a method for the nomination and election of United States Senators, which was in force and effect at the time of the alleged illegal acts of the defendants. Consequently, the State law became the sole law governing the primary election held in the State of West Virginia on June 6th, 1916. Whatever rights candidates voted for at that election had were secured to them solely by the State law, and could be enforced, if at all, only in the State courts.

But the facts charged in the *Aczel* case were altogether different from those alleged in the case at bar. In the *Aczel* case, the defendants were charged with conspiring to injure, oppress and threaten certain citizens of the United States in the free exercise and enjoyment of the right and privilege of voting at a general election for a candidate for United States Senator from the State of Indiana, and for a candidate for Representative in Congress from the Fifth Congressional District of the State of Indiana by the use of threats, and intimidation by the use of pistols and other fire-arms and by means of the fraudulent manipulation of voting machines. This was at a

general election.

The case at bar deals solely with a State primary election held for the purpose of nominating party candidates for political offices to be voted for at a subsequent general election. This is the all-controlling distinguishing fact between this case and the *Aczel* case, as well as all other cases cited in support of the Government's contention herein.

THE DECISIONS SUPPORT THE SUSTAINING OF THE DEMURRER.

On the other hand, the position of the defendants as argued for herein is directly supported by all the decisions on the special point involved that we have been able to find. The only decisions of the Federal courts directly on the question of Federal authority in State primary elections is that of *Elliott v. Thompson*, by Judge Wilbur F. Booth of the Western Division of the Western District of Missouri, unreported, but printed as an Appendix to the brief filed on behalf of the Government herein, and the one of Judge Woods in the instant case 236 Federal, 993, in both of which cases the lower courts have denied the authority of the Federal Government under existing laws as to the control of State primary elections.

We submit that the reasoning of Judge Booth and of Judge Woods in their respective opinions, is clear and convincing. It is argued, however, on behalf of the Government, that these Judges have taken a too restricted view of the subject; that their vision should have been much more extended and comprehensive. Our answer to that is that the courts can take no more extended view of the subject than does

Congress, and that if more comprehensive laws are demanded in order to meet the condition of the times, then it is the duty of Congress to act and not of the courts.

We are told in the Government's brief that:

"Broad principles are to be applied to varying conditions to attain the desired end, let those conditions be as novel or complex as may be (just as in *Commonwealth v. Silsbee*, 9 Mass., 473, and *Commonwealth v. Hoxey*, 16 Mass., 385, the court applied the common law to frauds and misconduct at town meetings though that law knew nothing of such meetings)".

Since the United States has no common law, we respectfully submit that Congress may act on such broad principles as are argued for in the brief of counsel for the Government, but the Federal courts can only interpret and apply the Constitution and laws of Congress.

COURTS MAY NOT REGULATE PRIMARIES BECAUSE OF THEIR IMPORTANCE.

Moreover, Federal courts may not interpret existing laws so as to extend Federal authority to State primary elections solely because of the fact that primary elections are important and that great interests may be affected by the result of such elections. Whatever may be said of the importance of primary elections may also be asserted of party caucuses and conventions but the Government has never assumed to hold those who participate in party caucuses or

conventions for the nomination of members of Congress and those who participate in legislative caucuses for the nomination of a candidate for Senator of the United States amenable to Federal laws. And yet it could be argued with just as good show of reason that the Federal law should apply to caucuses and nominating conventions as to primary elections.

THE GOVERNMENT HAS THE RIGHT TO HAVE ELECTIONS PURE AND UNTAINTED BY FRAUD.

We are told that the method of choosing Federal officials should not be tainted at its very source. That is fully recognized and admitted by all, and the means of keeping elections pure are directly at hand. The first reliance of the Federal Government is State laws against violation of rights as to the elective franchise. No one can say that the laws of West Virginia are lax in this regard. The Government enjoys the protection of a great bulwark hedged about its citizens by all the States to protect them in their right to vote.

Furthermore, full security is assured the Government as to elections by the reserved power under Section 1 of Article 4 of the Constitution.

But notwithstanding all this protection, more power to the Government is asked at the hands of the Court.

WHAT GOVERNMENT CONTROL OF PRIMARY ELECTIONS WOULD MEAN.

The theory of the Government is that the United

States, through its courts, has control and jurisdiction over a primary election held under and by virtue of the laws of the State of West Virginia; that candidates for Senator of the United States in such primary election are protected under and by virtue of the Constitution of the United States, and further by Acts of Congress, which we have seen can only go to the protection of a right guaranteed a citizen under the Constitution.

It is argued for the Government that the statute of June 4th, 1914, instead of being a very restricted act, as is indicated both by its title and by its limited provisions, is, in fact, a far reaching statute without limitation as to time or as to the Federal authority which it invokes in the matter of elections; that instead of being a single law, it has the force and effect of adopting all the election laws of all the States, as respects primaries, party conventions, caucuses, and general elections, and combines all the election machinery of the several States into one ponderous Federal election machine; invests in the Federal courts the authority to protect every right and privilege guaranteed by any State law in respect to the elective franchise and to punish for every violation of every such law, where Federal officials are chosen.

If the Government's contention be true, then this is an enforcement act indeed; far exceeding in its power and scope any law ever passed by Congress in re-construction days, and re-establishes Federal control of elections, which Justice Lamar, as late as 1914, in the dissenting opinion in the case of *United States v. Mosely*, 238 U. S., 316, argued had been relinquished in every respect by the repeal in 1894 of

the Federal election laws enacted in 1870 to meet the extraordinary conditions existing at that time.

Should the position of the Government in this case as to the force and effect of Federal election laws be sustained, it would be possible to have a Federal investigation of every election at which a Federal officer was voted for, and the Federal courts would have to hear and determine all matters growing out of such elections.

We do not apprehend that this Court will sustain the Government's position, but will continue to hold, as it has always held, that the primary control of elections is left to the States, subject to the reserved right by the Federal Government to regulate elections at which Federal officers are chosen whenever it is deemed necessary or expedient to do so; and that Congress has not, as yet,, either directly, or by implication, adopted State primary election laws as, in effect, Federal statutes.

NO. 775.

STATEMENT OF CASE.

No. 775 is an indictment against the same defendants, and involves the same primary election. It is based, however, not upon Sec. 19, but upon Sec. 37 of the Criminal Code, which reads as follows:

"Sec. 37. If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

Crim. Code U. S., Chap. 4, Sec. 37; Rev. Stat., Sec. 5440.

The indictment, after alleging that a general primary election was held on the 6th day of June, 1916, in the State of West Virginia, and under the laws of that State, for the nomination of candidates of political parties to be voted for at the general election to be held in said State on the 7th of November following, at which primary A. B. White, Howard Sutherland, Ben. Rosenbloom and W. F. Hite were opposing candidates for the Republican nomination for the office of United States Senator, charges that the defendants, Edward O'Toole and others, conspired and confederated together "to defraud the United States in the matter of its governmental right to have the candidates of the true choice and preference of said Republican and Democratic parties nominated for said office, and one of them elected and returned to the Senate of the United States, and given the salary lawfully attaching to said office, to the exclusion of all other persons." It then sets forth with more or less detail the alleged overt acts in furtherance of the conspiracy.

The defendants appeared and demurred to this

indictment, and, as grounds of demurrer, among others, assigned the following:

"1. The United States has no such governmental right as that described in said indictment to be defrauded of.

2. Neither the Constitution nor laws of the United States recognizes political parties or their nominations, and the United States neither exercises nor enjoys any governmental rights at their hands.

3. Because the primary statute under which the direct general primary alleged in said indictment was held simply recognizes political parties, and provides the machinery by which the governmental rights of the State may be exercised, and the violation of its rights in that behalf punished; and all governmental rights created by this statute, if any, are bestowed upon the State alone.

4. Because the matters and things alleged therein do not constitute any offense against the laws or sovereignty of the United States."

As in No. 776, Judge Woods sustained the demurrer, and entered a final judgment thereon in favor of the defendants, and the present writ of error was sued out by the Government.

The constitutional and statutory provisions, both national and State, involved in this case are the same as those involved in No. 776, and need not be again set forth herein.

ARGUMENT.**PRIMARY ELECTION NOT A CONDITION
PRECEDENT TO OR A NECESSARY
PART OF AN ELECTION.**

The contention of the Government brief is, in substance, that a general primary election under State law whereat the candidates of the various parties for the office of United States Senator may be selected, being a condition precedent to the election itself which follows, becomes, and is, a necessary part of the election, and confers rights upon the United States of which it may be defrauded, and may give rise to offenses which may be punished by that Government. As we have seen, however, this is not true, at least of a West Virginia primary, because under the West Virginia statute, even where a primary has been held, a man may become a candidate for the office of Senator or Representative in the Congress of the United States by petition, and not only be voted for at the subsequent election, but actually defeat all other competitors, whether nominated at the primary or not, and take his seat in the Congress. (See W. Va. Acts 1915, Chap 26, Sec. 23, Clause 2; also page 81 of this brief.)

The simple truth would seem to be that primaries merely result in party nominations or endorsements, and these endorsements may or may not result in an election to the particular office. They are a substitute for party caucuses or conventions, and are called into being either by party agreements or are established by State statutes, and, if their rules or regulations are violated, it

becomes a question of party reform, in the one case, or of State punishment, in the other. In other words, neither the Constitution nor laws of the United States recognizes or deals either with political parties or their nominations, and the United States neither exercises nor enjoys any governmental rights at their hands.

AUTHORITIES RELIED UPON BY GOVERNMENT HAVE NO APPLICATION.

Counsel for the Government rely upon the following cases as authority for the position that the United States has such an interest in a primary election whereat candidates for Congress or the Senate are selected as it may be defrauded of:

- U. S. v. Keitel, 211 U. S., 370;
- Haas v. Henkle, 216 U. S., 462;
- Curley v. U. S., 130 Fed., 1 (petition for certiorari denied, 195 U. S., 628);
- U. S. v. Morse, 161 Fed., 429;
- U. S. v. Aczel, 219 Fed., 917.

The indictment in the case of *United States v. Keitel*, supra, charged the defendants with illegally obtaining the title to certain coal lands belonging to the United States, and an order quashing this count of the indictment was reversed by this Court.

In *Haas v. Henkel*, supra, the indictment was for conspiring to deprive the National Government of proper service in the Department of Agriculture by corrupting an employe of that Department, and by inducing him to furnish secretly information in advance in respect to crop conditions and to is-

sue false reports contrary to the rules of the Government, which indictment was sustained.

The *Curley* case was a conspiracy in violation of the Civil Service Examination Act.

The *Morse* case alleged a conspiracy to defraud the United States in the exercise of its governmental and fiscal functions by giving false information in regard to the financial condition of a National Bank.

In the *Aczel* case the defendants were charged with conspiring to deprive citizens of their right to vote in a general election for members of Congress and United States Senators.

It is at once observed that each and all of these cases relied upon by the Government in this case, except the *Aczel* case, has for its subject matter something in which the United States is directly interested, either as the owner of property rights, or on account of some direct connection with the organized functions of the Government.

The *Aczel* case deals with a general election for Congressmen and Senators of the United States, has nothing to do with a primary election, and has been hereinbefore discussed and distinguished.

It is, therefore, respectfully submitted that the demurrer to each indictment has been properly sustained, and that the judgments in favor of the defendants below should be affirmed.

JOHN H. HOLT,
LUTHER C. ANDERSON,
Counsl for Defendants in Error.

February 26, 1917.

UNITED STATES *v.* GRADWELL ET AL.

UNITED STATES *v.* HAMBLY ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF RHODE ISLAND.

UNITED STATES *v.* O'TOOLE ET AL.

UNITED STATES *v.* O'TOOLE ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA.

Nos. 683, 684, 775, 776. Argued March 16, 1917.—Decided April 9, 1917.

A conspiracy to influence a congressional election by bribery of voters is not a conspiracy to defraud the United States within the meaning of § 37 of the Penal Code, formerly § 5440 of the Revised Statutes.

Quere: Whether the power of Congress to regulate elections of Senators and Representatives, Const., Art. I, § 4, is applicable to a general nominating primary as distinguished from a final election?

The primary election law of West Virginia, Acts 1915, c. 26, pp. 222, 246, provides that only candidates belonging to a political party which polled three per cent. of the vote of the State at the last preceding general election can be voted for, excludes independent and other voters not regular and qualified members and voters of such a party from participation in the primary, and further provides that, after the primary, candidates, including persons who have failed therein, may be nominated by certificate signed by not less than five per cent. of the entire vote of the last preceding election. *Held*, That the rights which candidates for nomination for the office of Senator of the United States may have in such a primary come wholly from the state law; and a conspiracy to deprive them of such rights by debauching the primary with illegal votes for an opposing candidate is not within the scope of § 19 of the Penal Code (formerly Rev. Stats., § 5508) designed for the protection of rights and privileges secured by the Constitution or laws of the United States.

243 U. S.

Opinion of the Court.

The Federal Corrupt Practices Act, and amendments (c. 392, 36 Stat. 822; c. 33, 37 Stat. 25; c. 349, 37 Stat. 360), recognizing primary elections and limiting the expenditures of candidates for Senator in connection with them, are not in effect an adoption of all state primary laws as acts of Congress.

The temporary measure enacted by Congress for the conduct of the nomination and election of Senators until other provision should be made by state legislation (c. 103, 38 Stat. 384) was superseded as to West Virginia by the primary law of that State of February 20, 1914, effective ninety days after its passage.
234 Fed. Rep. 446; 236 Fed. Rep. 993, affirmed.

THE cases are stated in the opinion.

Mr. Assistant Attorney General Wallace for the United States.

Mr. Alexander L. Churchill for defendants in error in Nos. 683 and 684.

Mr. John W. Cummings, with whom *Mr. James T. Cummings* and *Mr. John J. Fitzgerald* were on the brief, for defendant in error Flynn, in No. 684.

Mr. John H. Holt, with whom *Mr. Luther C. Anderson* was on the brief, for defendants in error in Nos. 775 and 776.

MR. JUSTICE CLARKE delivered the opinion of the court.

These four cases were argued together because the indictments in the first three must be justified, if at all, under the same section (§ 37) of the Criminal Code of the United States, while the fourth involves the application of § 19 of that Code to the same state of facts which we have in the third case.

In the Gradwell case (No. 683) and in the Hambly case (No. 684) the fourteen defendants are charged in the in-

dictments with having conspired together "to defraud the United States," and to commit a wilful fraud upon the laws of the State of Rhode Island, by corrupting and debauching, by bribery of voters, the general election held on the third of November, 1914, at which a Representative in Congress was voted for and elected in the Second Congressional District of Rhode Island in the Gradwell case, and in the First Congressional District in the Hambly case, thereby preventing "a fair and clean" election.

No. 775 relates to the conduct of a primary election held in the State of West Virginia on the sixth of June, 1916, under a law of that State providing for a state wide nomination of candidates for the United States Senate. In the indictment twenty defendants are charged with conspiring "to defraud the United States in the matter of its governmental right to have the candidates of the true choice and preference of said Republican and Democratic parties nominated for said office, and one of them elected," by causing and procuring a large number of persons who had not resided in the State a sufficient length of time to entitle them to vote under the state law, to vote at the primary for a candidate named, and also to procure four hundred of such persons to vote more than once at such primary election.

The indictment in No. 776 charges that the same defendants named in No. 775 conspired together to "*injure and oppress*" White, Sutherland and Rosenbloom, three candidates for the Republican nomination for United States Senator who were voted for at the primary election held in West Virginia on June 6th, 1916, under a law of that State, by depriving them of the "right and privilege of having each Republican voter vote once only, for some one" of the Republican candidates for such nomination, and of not having any votes counted at such election except such as were cast by Republican voters duly qualified

243 U. S.

Opinion of the Court.

under the West Virginia law. The charge is that the defendants conspired to accomplish this result by procuring a thousand persons, who were not qualified to vote under the state law, because they had not resided in that State a sufficient length of time, to vote for an opposing candidate, William F. Hite, and many of them to vote more than once, and to have their votes cast, counted and returned as cast in favor of such candidate.

A demurrer to the indictment by each of the defendants in each case, on the ground that it fails to set forth any offense under the laws of the United States, was sustained by the District Court of the District of Rhode Island in the first two cases and of the Southern District of West Virginia in the third and fourth. The cases are here on error.

It is plain from the foregoing statement that the indictments in the first three cases are based solely upon the charge that the defendants conspired "to defraud the United States" in violation of § 37 of the Criminal Code, and that the indictment in No. 776 is based upon the charge that three candidates for the nomination for Senator of the United States were "injured and oppressed" within the meaning of § 19 of the Criminal Code, by a conspiracy on the part of the defendants to compass their defeat by causing illegal voting for an opposing party candidate at the primary election.

The applicable portions of §§ 37 and 19 are as follows:

"Section 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, . . . each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

"Section 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to

him by the Constitution or laws of the United States, or because of his having so exercised the same, . . . they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

The argument of counsel for plaintiff in error in the first three cases is that the United States Government has the right to honest, free and fair elections, that a conspiracy to corrupt electors by bribery has for its object the denial and defeat of this right and that it therefore is a scheme to defraud the United States within the meaning of § 37. This presents for decision the questions:

Is § 37 of the Criminal Code applicable to congressional elections, and if it is, has the United States such an interest or right in the result of such elections that to bribe electors constitutes a fraud upon the Government within the meaning of this section?

To admit, as it must be admitted, that the people of the United States and so their Government, considered as a political entity, have an interest in and a right to honest and fair elections advances us but little toward determining whether § 37 was enacted to protect that right and whether a conspiracy to bribe voters is a violation of it. Obviously the Government may have this right and yet not have enacted this law to protect it. It may be, as is claimed, that Congress intended to rely upon state laws and the administration of them by state officials to secure honest elections, and that this section was enacted for purposes wholly apart from those here claimed for it.

To answer the questions presented requires that we look to the origin and history of § 37, and that we consider what has been, and is now, the policy of Congress in dealing with the regulation of elections of Representatives in Congress.

243 U. S.

Opinion of the Court.

Section 37 first appears as § 30 of "An Act to amend existing laws relating to Internal Revenue, and for other purposes," enacted on March 2, 1867, 14 Stat. 471, and, except for an omitted not relevant provision, the section has continued from that time to this, in almost precisely its present form. It was carried into the revision of the United States Statutes of 1873-4 as § 5440 of Chapter 5, the title of which is "Crimes against the Operations of the Government," while another chapter, Chapter 7 of the revision, deals with "Crimes against the Elective Franchise and Civil Rights of Citizens." Forty-two years after its first enactment the section was carried into the Criminal Code (in force on and after January 1st, 1910) where it now appears as § 37, again in a chapter, now Chapter 4, devoted to "Offenses against the Operations of the Government," while Chapter 3 of the Code deals with "Offenses against the Elective Franchise and Civil Rights of Citizens."

The section has been widely applied in the prosecution of frauds upon the revenue, in land cases and to other operations of the Government, and, while no inference or presumption of legislative construction is to be drawn from the chapter headings under which it is found in the Criminal Code (§ 339), nevertheless the history of the origin, classification and use made of the section, which we have just detailed, are not without significance, and taken with the fact that confessedly this is the first time that it has been attempted to extend its application to the conduct of elections, they suggest strongly that it was not intended by Congress for such a purpose.

Further aid in determining the application and construction of the section may be derived from the history of the conduct and policy of the Government in dealing with congressional elections.

The power of Congress to deal with the election of Senators and Representatives is derived from § 4, Article 1

of the Constitution of the United States, providing that:

"The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

Whatever doubt may at one time have existed as to the extent of the power which Congress may exercise under this constitutional sanction in the prescribing of regulations for the conduct of elections for Representatives in Congress or in adopting regulations which States have prescribed for that purpose has been settled by repeated decisions of this court, in *Ex parte Siebold*, 100 U. S. 371, 391 (1879); *Ex parte Clarke*, 100 U. S. 399 (1879); *Ex parte Yarbrough*, 110 U. S. 651 (1884); and in *United States v. Mosley*, 238 U. S. 383 (1915).

Although Congress has had this power of regulating the conduct of congressional elections from the organization of the Government, our legislative history upon the subject shows that, except for about twenty-four of the one hundred and twenty-eight years since the Government was organized, it has been its policy to leave such regulations almost entirely to the States, whose representatives Congressmen are. For more than 50 years no congressional action whatever was taken on the subject until 1842 when a law was enacted requiring that Representatives be elected by Districts (5 Stat. 491), thus doing away with the practice which had prevailed in some States of electing on a single state ticket all of the Members of Congress to which the State was entitled.

Then followed twenty-four years more before further action was taken on the subject when Congress provided for the time and mode of electing United States Senators (14 Stat. 243) and it was not until four years later, in 1870, that, for the first time, a comprehensive system for dealing

243 U. S.

Opinion of the Court.

with congressional elections was enacted. This system was comprised in §§ 19, 20, 21 and 22 of the Act approved May 31, 1870, 16 Stat. 144; in §§ 5 and 6 of the Act approved July 14, 1870, 16 Stat. 254; and in the Act amending and supplementing these acts, approved June 10, 1872, 17 Stat. 347, 348, 349.

These laws provided extensive regulations for the conduct of congressional elections. They made unlawful, false registration, bribery, voting without legal right, making false returns of votes cast, interfering in any manner with officers of election and the neglect by any such officer of any duty required of him by state or federal law; they provided for appointment by Circuit Judges of the United States of persons to attend at places of registration and at elections, with authority to challenge any person proposing to register or vote unlawfully, to witness the counting of votes and to identify by their signatures the registration of voters and election tally sheets; and they made it lawful for the marshals of the United States to appoint special deputies to preserve order at such elections, with authority to arrest for any breach of the peace committed in their view.

These laws were carried into the revision of the United States Statutes of 1873-4, under the title "Crimes against the Elective Franchise and Civil Rights of Citizens," Rev. Stats., §§ 5506 to 5532, inclusive.

It will be seen from this statement of the important features of these enactments that Congress by them committed to federal officers a very full participation in the process of the election of Congressmen, from the registration of voters to the final certifying of the results, and that the control thus established over such elections was comprehensive and complete. It is a matter of general as of legal history that Congress, after twenty-four years of experience, returned to its former attitude toward such elections and repealed all of these laws with the exception

of a few sections not relevant here. Act approved February 8, 1894, 28 Stat. 36. This repealing act left in effect as apparently relating to the elective franchise, only the provisions contained in the eight sections of Chapter 3 of the Criminal Code, §§ 19 to 26, inclusive, which have not been added to or substantially modified during the twenty-three years which have since elapsed.

The policy of thus entrusting the conduct of elections to state laws, administered by state officers, which has prevailed from the foundation of the Government to our day, with the exception, as we have seen, of twenty-four years, was proposed by the makers of the Constitution and was entered upon advisedly by the people who adopted it, as clearly appears from the reply of Madison to Monroe in the debates in the Virginia Convention, saying that:

"It was found impossible to fix the time, place, and manner, of election of representatives in the constitution. It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution. . . . Were they exclusively under the control of the state governments, the general government might easily be dissolved. But if they be regulated properly by the state legislatures, the congressional control will very probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the constitution." Records of the Federal Convention, Farrand, vol. 3, p. 311.

And, in Essay No. LIX of the Federalist, Hamilton writes:

"They [the convention] have submitted the regulation of elections for the federal government, in the first instance, to the local administrations; which, in ordinary

243 U. S.

Opinion of the Court.

cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety."

With it thus clearly established that the policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers, and that whenever it has assumed to regulate such elections it has done so by positive and clear statutes, such as were enacted in 1870, it would be a strained and unreasonable construction to apply to such elections this § 37, originally a law for the protection of the revenue and for now fifty years confined in its application to "Offenses against the Operations of the Government" as distinguished from the processes by which men are selected to conduct such operations.

When to all this we add that there are no common-law offenses against the United States (*United States v. Hudson*, 7 Cranch, 32; *United States v. Eaton*, 144 U. S. 677), that before a man can be punished as a criminal under the federal law his case must be "plainly and unmistakably" within the provisions of some statute (*United States v. Lacher*, 134 U. S. 624, 628), and that Congress has always under its control the means of defeating frauds in the election of its members by enacting appropriate legislation and by resort to the constitutional grant of power to judge of the elections, returns and qualifications of its own members, we cannot doubt that the District Court was right in holding that the section was never intended to apply to elections, and that to bribe voters to vote at such an election is not such a fraud upon the United States or upon candidates or the laws of Rhode Island as falls within either the terms or purposes of the section.

There remains to be considered the second West Vir-

ginia case, No. 776. The indictment in this case charges that the defendants conspired to procure and did procure a large number of persons, not legal voters of West Virginia to vote, and a number of them to vote more than once, in favor of one of the four candidates for the Republican nomination for United States Senator at a state primary. The claim is that such illegal voting "injured and oppressed" the three other party candidates, within the meaning of § 19 of the Criminal Code of the United States, by depriving them of a right, which it is argued they had "by the Constitution and laws of the United States," to have only qualified Republican voters of the state vote, not more than once for some one of the candidates of that party for Senator at such election.

Here again, confessedly, an attempt is being made to make a new application of an old law to an old type of crime, for § 19 has been in force, in substance, since 1870, but has never before been resorted to as applicable to the punishment of offenses committed in the conduct of primary elections or nominating caucuses or conventions, and the question presented for decision is:

Did the candidates named in the indictment have such a right under the applicable West Virginia law that a conspiracy to corrupt the primary election held under that law on the sixth day of last June "injured and oppressed" them within the meaning of § 19 of the Federal Criminal Code?

That this § 19 of the Criminal Code is applicable to certain conspiracies against the elective franchise is decided by this court in *United States v. Mosley*, 238 U. S. 383, but that decision falls far short of making the section applicable to the conduct of a state nominating primary, and does not advance us far toward the claimed conclusion that illegal voting for one candidate at such a primary so violates a right secured to the other candidates by the United States Constitution and laws as to consti-

243 U. S.

Opinion of the Court.

tute an offense within the meaning and purpose of the section.

The constitutional warrant under which regulations relating to congressional elections may be provided by Congress is in terms applicable to the "times, places and manner of holding elections [not nominating primaries] for Senators and Representatives." Primary elections, such as it is claimed the defendants corrupted, were not only unknown when the Constitution was adopted but they were equally unknown for many years after the law, now § 19, was first enacted. They are a development of comparatively recent years, designed to take the place of the nominating caucus or convention, as these existed before the change, and even yet the new system must be considered in an experimental stage of development, under a variety of state laws.

The claim that such a nominating primary, as distinguished from a final election, is included within the provision of the Constitution of the United States applicable to the election of Senators and Representatives is by no means indisputable. Many state supreme courts have held that similar provisions of state constitutions relating to elections do not include a nominating primary. *Ledgerwood v. Pitts*, 122 Tennessee, 570; *Montgomery v. Chelf*, 118 Kentucky, 766; *State ex rel. Von Stade v. Taylor*, 220 Missouri, 619; *State v. Nichols*, 50 Washington, 508; *Gray v. Seitz*, 162 Indiana, 1; *State v. Erickson*, 119 Minnesota, 152.

But even if it be admitted that in general a primary should be treated as an election within the meaning of the Constitution, which we need not and do not decide, such admission would not be of value in determining the case before us, because of some strikingly unusual features of the West Virginia law under which the primary was held out of which this prosecution grows. By its terms this law provided that only candidates for Congress belonging

to a political party which polled three per cent. of the vote of the entire State at the last preceding general election could be voted for at this primary, and thereby, it is said at the bar, only Democratic and Republican candidates could be and were voted for, while candidates of the Prohibition and Socialist parties were excluded, as were also independent voters who declined to make oath that they were "regular and qualified members and voters" of one of the greater parties. Even more notable is the provision of the law that after the nominating primary, candidates, even persons who have failed at the primary, may be nominated by certificate signed by not less than five per cent. of the entire vote polled at the last preceding election. Acts West Virginia, 1915, c. 26, pp. 222, 246.

Such provisions as these, adapted though they may be to the selection of party candidates for office, obviously could not be lawfully applied to a final election at which officers are chosen, and it cannot reasonably be said that rights which candidates for the nomination for Senator of the United States may have in such a primary under such a law are derived from the Constitution and laws of the United States. They are derived wholly from the state law and nothing of the kind can be found in any federal statute. Even when Congress assumed, as we have seen, to provide an elaborate system of supervision over congressional elections no action was taken looking to the regulation of nominating caucuses or conventions, which were the nominating agencies in use at the time such laws were enacted.

What power Congress would have to make regulations for nominating primaries or to alter such regulations when made by a State we need not inquire. It is sufficient to say that as yet it has shown no disposition to assume control of such primaries or to participate in them in any way, and that it is not for the courts, in the absence of such legislation, to attempt to supply it by stretching old

243 U. S.

Opinion of the Court.

statutes to new uses, to which they are not adapted and for which they were not intended. In this case, as in the others, we conclude that the section of the Criminal Code relied upon, originally enacted for the protection of the civil rights of the then lately enfranchised negro, cannot be extended so as to make it an agency for enforcing a state primary law, such as this one of West Virginia.

The claim that the Federal Corrupt Practices Act (June 25, 1910, c. 392, 36 Stat. 822, amended August 19, 1911, c. 33, 37 Stat. 25, and August 23, 1912, c. 349, 37 Stat. 360), recognizing primary elections and limiting the expenditures of candidates for Senator in connection with them is, in effect, an adoption by Congress of all state primary laws is too unsubstantial for discussion; and the like claim that the temporary measure (Act of June 4, 1914, 38 Stat. 384), enacted by Congress for the conduct of the nomination and election of Senators until other provision should be made by state legislation cannot be entertained, because this act was superseded by the West Virginia primary election law, passed February 20th, 1914, effective ninety days after its passage.

It results that the judgments of the District Court in each of these cases must be

Affirmed.